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SOCIAL SECURITY DISABILITY: THE EFFECTS OF THE ACCELERATED REVIEW

ORIGINAL

JOINT HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING

AND THE

SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE, AND GENERAL SERVICES

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

FORT SMITH, ARK.

NOVEMBER 19, 1982

COMPLETED

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SOCIAL SECURITY DISABILITY: THE EFFECTS OF THE ACCELERATED REVIEW

FRIDAY, NOVEMBER 19, 1982

U.S. SENATE, SPECIAL COMMITTEE ON AGING AND THE SUBCOMMITTEE ON CIVIL SERVICE, POST OFFICE, AND GENERAL SERVICES OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,

Fort Smith, Ark.

The committee met, pursuant to notice, at 9 a.m., in Creekmore Center, Fort Smith, Ark., Hon. David Pryor, presiding.

Present: Senator Pryor.

Also present: Theresa M. Forster, legislative aide; Edwin S. Jayne, minority staff director, Subcommittee on Civil Service, Post Office, and General Services, Committee on Governmental Affairs; Virginia Sheb Adkisson and Marilyn Byrd, staff assistants; and Annie Powell, intern.

OPENING STATEMENT BY SENATOR DAVID PRYOR, PRESIDING

Senator PRYOR. Good morning.

We have people here this morning not only just from Sebastian County, but we have people from all over the State. I just met a gentleman from Des Ark, Ark., over in the prairie area of Arkansas, who has driven over early this morning. We have people, I think generally statewide, who have come here for this hearing.

I think this demonstrates without question what a critical issue is facing us in the area of social security disability insurance. I think that's the reason that we have the large crowd and the reason that they are still continuing to try to bring in extra chairs. I am very fearful that those who have gotten here past this point will possibly have to stand up.

I would like to ask the support and cooperation of those individuals who feel like they are healthy enough to stand. There are a lot of people here with walking canes who are infirm and if you see someone in that condition, we would certainly appreciate you giving those individuals the choice of sitting.

Let me open this hearing this morning by saying that this is an official joint hearing of the U.S. Senate Special Committee on Aging and the Subcommittee on Civil Service, Post Office, and General Services of the Governmental Affairs Committee on the subject of "Social Security Disability and the Effects of the Accelerated Review" process.

I believe it to be very appropriate that we have brought this meeting to the State of Arkansas, and particularly to Fort Smith,

Ark. Our State has the highest disability rate in America; approximately 51 of every 1,000 Arkansans are receiving social security disability. And, although Arkansas has the highest number of individuals applying for disability, it also has the highest denial rate for initial applications.

With the institution of the continuing disability eligibility reviews which were mandated by the Social Security Disability Amendments of 1980, and which began in March 1981, about 49 percent of those citizens of Arkansas who are being reviewed are now being told they are no longer eligible for disability benefits. About two-thirds of the approximately 50 percent who appeal these decisions are eventually reinstated at some level during the review process.

I think that these figures alone indicate that there are some very serious problems associated with these continuing disability reviews. But these statistics become even more alarming when viewed as representative of the thousands of individuals who have been erroneously terminated, and whose lives are being needlessly and adversely affected by this decision process.

One case which has received some notoriety was reported recently in the Wall Street Journal. It involved a Vietnam veteran who had his jaw wired shut, had lost a leg, two fingers, his spleen, and parts of both his stomach and buttocks, who—despite these injuries—had his benefits terminated. When I questioned the Social Security Administrator in Washington, D.C., about this case, I was told, and I quote, "Mistakes do occur."

Another case, which was the focus of a recent Governmental Affairs Subcommittee hearing, involved a man with acute diabetes, who had only limited vision in one eye, and suffered from the effects of a stroke, arteriosclerosis, and heart disease. This elderly man was suddenly cut from the rolls after 7 years of disability.

In August 1981, he began the appeals process. Although the Social Security Administration was quick to terminate this individual, the reinstatement was not so rapid. Finally, in February 1982, the Social Security Administration admitted their mistake and agreed to restore benefits retroactive to July 1981. Unfortunately, this individual had died during the process the previous November.

Several others who have been denied continued disability benefits have reportedly died shortly after the denial determination.

In September 1982, the Los Angeles Times documented 11 individuals who were cut off from or denied social security disability benefits because they were, quote, "well enough," unquote, to work and have died—all 11 have died this year—of the same disabilities for which they had requested benefits. At least one of those reported deaths occurred in our own State of Arkansas. Some of the families of these individuals have plainly stated that it was the denial letter that actually had the effect of ultimately killing the individuals.

A recent Arkansas Democrat newspaper article gave the details of several Arkansans who had experienced serious financial, mental, and physical hardships when their benefits were denied. Mistakes do occur. But they are occurring too often and they are damaging to the lives that they affect.

Many times there is no way for the claimant to continue to pay his rent, utilities, or to buy his food during the appeals process. I find that condition unthinkable and insensitive.

In most cases, when disability is cut off, so is medicare, which is so important in paying ongoing medical bills which many of the claimants continue to have.

The fact that so many individuals today are being terminated from benefit status, only to be reinstated through an appeals process, indicates the accelerated reviews have created serious problems in the disability program.

Just look at the facts: In 1980, 100,000 cases were reviewed; 650,000 disability cases will be reviewed in 1983 and thereafter.

Accelerated reviews were instituted 10 months ahead of time, which did not allow enough leadtime for staff preparation.

Criteria changes have occurred. Individuals under review, who have not improved medically, may still be terminated due to changed rules and criteria.

Appeal delays exist. The appeals process may take anywhere from 6 to 12 months—in some cases 18 months—during which time most claimants have their benefits cut off.

These are only a few, I think, of the apparent problems which we will explore today. And there has been widespread congressional concern over this topic.

Earlier this year, I attended an oversight hearing of the Senate Governmental Affairs Committee on this subject. And the Senate Aging Committee, of which I am a member, has also explored the issues and has put together a report which outlines the problems in the review process.

There have also been administrative reforms instituted as of October 1982, only last month. But I believe that the time has come for Congress to face head on these many concerns and human problems.

Just as the financing of the social security system is one of the most crucial issues we now face in terms of financial costs, so reform of the current disability review process is critical, in terms of real human cost and human suffering. This will be documented through the testimony we hear this morning.

I have already pledged my full support to legislation and have offered my name as cosponsor along with Senators Cohen of Maine, and Levin of Michigan, to legislation which would extend benefits through the appeals process.

This provision will be a key part of legislation expected for consideration in the upcoming lameduck session of the Congress, which convenes November 29. However, additional and more comprehensive legislation is absolutely necessary and Congress must address this in 1983.

I intend to remain very actively involved in that process. Today, I look forward to the testimony of our witnesses—those people who have been affected by this process and those individuals who are involved in this process. I hope this hearing will serve as a forum for the education of our citizens. In addition, the testimony and the transcript of the proceedings this morning in Arkansas will be made available to the Senate Governmental Affairs Committee, to

the Special Committee on Aging, and to each Member of the U.S. Senate.

And, finally, ladies and gentlemen, let me say this, and this is just a personal note: We had invited to this morning's hearing representatives from the Social Security Administration in Baltimore or in Dallas to be with us, to help explain to the citizens of our State and our country, this very complicated, drawn-out, mind-boggling, bureaucratic review process.

I would like to inform each and every person here today that I am deeply sorry that the Social Security Administration, by letter sent to me yesterday, has denied their representatives the opportunity to appear before this meeting.

I am very sorry about this because I am afraid that it goes one step further in illustrating a lack of concern; and, certainly, I think it also shows the insensitivity on the part of the Social Security Administration in being unwilling to face the public of this country to explain a process that they themselves have instituted.

I have registered my protest with the Social Security Administration for their failure to allow a witness to be with us this morning.

They have consented, however, to allow a statement to be printed in the hearing record but that will be too late and that, as far as I am concerned, is absolute insensitivity of the worst sort.[1]

So I am sorry that the Social Security Administration has chosen not to come before the public this morning to explain the process or to explain their position in this entire review.

Finally, let me also say that each and every person in this room, I would imagine, has a particular or a specific problem relative to social security or social security disability. I am aware of this.

Just a few moments ago, I had the opportunity to visit with some who have been cut off in this process.

Well, let me say that this morning it is going to be impossible for us to hear every individual case. We will, however, if time permits at the end of the hearing, allow some of you to rise to your feet to express your basic concern about the process. And we hope that we will not become too detailed in each individual case, so that we can allow our other citizens to express themselves, hopefully, in 1- to 2-minute time periods.

So let's cooperate, and I know that probably you'd like to get up and make a speech, you'd like to say something, you'd like to say what happened in your particular case, or your mother's situation, or your husband's problem, but let us, if we could, let us cooperate with each other, trying to hear these typical cases that we've drawn from the files and continue in that orderly fashion.

We have this morning some public witnesses that we have chosen from the files of the social security cases in this area of our State that we think might typify some of the problems in the review process that we are faced with at this moment.

Before we get to those witnesses this morning, I would like to mention that a recent Southwest Times Record article, dated Sunday, November 14, written by Jack Moseley, entitled "Social Security Cutbacks Border on Terrorization," which I find to be

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[1] See appendix, item 1, page 57.

very accurate in dealing with the human misery involved in this matter, will be inserted in the record at this time.

[The prepared statement of Senator Pryor and newspaper article follow:]

PREPARED STATEMENT OF SENATOR DAVID PRYOR

I am pleased to be here today to hold a joint hearing of the U.S. Senate Special Committee on Aging and the Subcommittee on Civil Service, Post Office, and General Services of the Governmental Affairs Committee on "Social Security Disability: The Effects of the Accelerated Review." I would like to thank both Senator John Heinz of Pennsylvania, who chairs the Aging Committee, and Senator Ted Stevens of Alaska, chairman of the Governmental Affairs subcommittee, for authorizing me to hold this official Senate hearing here in Fort Smith, Ark.

I believe it is most appropriate that we have brought this meeting to Arkansas, and particularly to Fort Smith. Our State has the highest disability rate in the Nation—approximately 51 out of every 1,000 Arkansans are receiving social security disability. And, although Arkansas has the highest number of individuals applying for disability, it has the highest denial rate for initial applications.

With the institution of the continuing disability eligibility reviews which were mandated by the Social Security Disability Amendments of 1980 and which began in March 1981, about 49 percent of those Arkansans who are being reviewed are being told they are no longer eligible for benefits. About two-thirds of the approximately 50 percent who appeal are eventually reinstated at some level during the appeals process.

These figures alone indicate that there are some serious problems associated with these continuing disability reviews. But these statistics become even more alarming when viewed as representative of the thousands of individuals who have been erroneously terminated and whose lives are being needlessly and adversely affected.

One case which has received some notoriety was reported in the Wall Street Journal. It involved a Vietnam veteran who had his jaw wired shut, and had lost a leg, two fingers, his spleen, and parts of both his stomach and buttocks, who despite these injuries had his benefits terminated. When I questioned a Social Security administrator about this case I was told, "Mistakes do occur."

Another case, which was the focus of a recent Governmental Affairs subcommittee hearing, involved a man with acute diabetes, who had only limited vision in one eye, and suffered from the effects of a stroke, arteriosclerosis, and heart disease. This elderly man was suddenly cut from the rolls after 7 years. In August 1981, he began the appeals process. Although the Social Security Administration was quick to terminate, the reinstatement was not so rapid. Finally in February 1982, they admitted their mistake and agreed to restore benefits retroactive to July 1981. Unfortunately, the claimant had died the previous November.

Several others who have been denied continued disability benefits have reportedly died shortly after the denial determination. In September 1982, the Los Angeles Times documented 11 individuals who were cut off from or denied social security disability benefits because they were "well enough" to work and have died this year of the same disabilities for which they had requested benefits. At least one of these reported deaths occurred in Arkansas. Some of the families of these individuals have plainly stated that it was the denial letter that killed the claimant.

A recent Arkansas Democrat newspaper article gave the details of several Arkansans who have experienced serious financial, mental, and physical hardships when their benefits were denied. Mistakes do occur. But they are occurring too often and they are too damaging to the lives they affect. Many times there is no way for the claimant to continue to pay his rent or buy his food during the appeals process. And, in most cases when disability is cut off, so is medicare, which is so important in paying the ongoing medical bills which many of the claimants continue to incur.

Before we more closely explore the causes of these problems, and, hopefully, some potential solutions, it may help to briefly review the history of the disability program itself, and the application and review process.

The disability insurance program had its beginnings in 1956, when the Congress authorized cash benefits for totally disabled workers 50 or over. Since then, benefits have been expanded to include dependents, the age-50 eligibility requirement for disability has been eliminated, and health benefit coverage through the medicare program has been added. In addition, action was taken to raise taxes and further define the term "disability."

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In 1980, the Congress passed the Social Security Amendments of 1980, which included provisions which sought to make certain management improvements. A cap was placed on total family benefits, benefits for younger disabled workers were reduced, medicare benefit coverage was expanded, and the Secretary of Health and Human Services was given the authority to set up performance standards for the State disability determination agencies to follow.

Another provision, which at the time of passage was considered only a minor change, was a requirement that the Secretary of Health and Human Services conduct reviews of all nonpermanently disabled beneficiaries every 3 years. Permanently disabled individuals were to be reviewed periodically as well, but the length of time between the reviews was up to the discretion of the Secretary. The 3-year reviews came about in response to a General Accounting Office report that estimated that approximately 20 percent of all individuals on social security disability were on the rolls erroneously.

It is important to note that although concern over the financial stability of the social security system dates back to the late 1970's, the disability insurance trust fund is the only one of the three social security trust funds which is considered to be in good financial condition. In fact, this fund is predicted to show a surplus over both the short and long run, even under pessimistic economic assumptions. This may, to some degree, be due to the tightening up of eligibility criteria.

The reviews were originally scheduled to begin in January 1982, and were expected to net $10 million in savings over fiscal years 1982 through 1985. However, the reviews were begun in March 1981, and, despite an increase of 400 percent in the number of reviews between 1980 and 1982, staffing levels were increased by only 27 percent nationally. Social Security recently revised their savings estimates, saying that the reviews will produce a net savings of between $2.6 and $3.2 billion between fiscal years 1982 and 1985. I am certainly in favor of achieving government savings by eliminating ineligible recipients, but let us look more closely at what has transpired.

The Social Security Administration chooses which cases are to be reviewed on the basis of likelihood of medical improvement or ineligibility. Cases are submitted to the State office. The State office notifies the beneficiary of his upcoming review, and that he should submit evidence of his continued disability. If the claimant is found to be eligible by the State agency, he is notified of his continued benefits.

In the case where a beneficiary is found no longer eligible, he is informed of that fact and told of his right to submit additional medical evidence and reevaluation. If the beneficiary is still considered ineligible, he is notified and told that he has the right to appeal the decision within 60 days to an administrative law judge. This is the first opportunity for the individual to meet face-to-face with a decisionmaker. Should the ALJ rule against the claimant, the next step of appeal is through the Appeals Council, a 15-member panel within the Office of Hearings and Appeals which may rule on the ALJ's decision. If the claimant is not satisfied with the Appeals Council decision his final appeal would be to the Federal district court.

The fact that so many individuals are being terminated from benefit status only to be reinstated during the appeals process indicates that the accelerated reviews have created some serious problems in the disability program.

Among them are:

The number of cases: In 1980, about 100,000 cases were reviewed; 650,000 will be reviewed in 1983 and thereafter.

Accelerated review: The reviews were instituted 10 months ahead of time, which did not allow enough leadtime for staff preparation.

Criteria changes: Individuals under review who have not improved medically may still be terminated due to changed criteria; and

Appeal delays: The appeals process may take anywhere from 6 to 12 to 18 months—during which most claimants are not receiving benefits.

These are only a few of the most apparent problems which we will explore today.

There has been widespread congressional concern over this topic. Earlier this year I attended an oversight hearing of the Senate Governmental Affairs Committee on this topic, and the Senate Aging Committee, of which I am a member, has also explored the issue and has put together a report which outlines many of the problems in the review process.

There have also been some administrative reforms instituted as of October 1982. But I believe the time has come for the Congress to face head-on these many concerns. Just as financing of the social security system is one of the very most crucial issues we now face in terms of financial costs, so reform of the current disability review process is critical in terms of real human costs. This will be documented through the testimony we hear today.

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I have already pledged my full support to legislation by Senators Cohen and Levin which would extend benefits through the appeals process. This legislation will be a key provision of legislation expected to be considered in the upcoming lameduck session of the Congress.

However, additional, more comprehensive legislation is necessary, and the Congress must address this in 1983. I intend to remain very actively involved in that process.

I look forward to hearing today's testimony.

[From the Fort Smith, Ark., Southwest Times Record, Nov. 14, 1982]

Social Security Cutbacks Border on Terrorization

(By Jack Moseley)

Grabbing away the crutches of a one-legged man and kicking him in the shin is not going to cure the problems of the social security system.

That makes about as much sense as trying to fix a blown engine by popping in a new oil filter. It just won't work.

But what a bunch of Federal bureaucrats are doing to sick and disabled Americans is even worse than attacking a cripple. In some instances, it borders on terrorizing those least able to defend themselves, stripping them of dignity, creating added anxiety for heart and lung patients, forcing them onto welfare rolls, and forgetting they even exist. The coldest, cruelest form of man's inhumanity to man must be bureaucratic indifference in a Government that is intended to be "of, by, and for the people."

I'm talking about the current wave of undeserved cutoffs of social security disability benefits here and across the Nation. This will be the subject of public hearings in Fort Smith next Friday by Senator David Pryor. Hopefully, those hearings will be a step toward correcting an awful mess that is inflicting misery on far too many people.

I'm a hard-nose when it comes to disabled and handicapped people. I have quoted John Kennedy that "life itself is not always fair." I have deplored welfare cheats and those who abuse other public benefit programs. I have argued that the taxpayers cannot afford to put elevators in every two-story school house in America for the benefit of those in wheelchairs. But I have never denied a public responsibility for those who cannot work because of physical and mental conditions totally beyond their control, especially for those who paid into the social security system the same as most of us.

As I understand it, here is what has happened:

Under the Carter administration, Congress passed a law ordering regular reviews of people drawing disability benefits to eliminate ongoing cash payments to people who had recovered from one disability or another and were still receiving monthly Government checks. That made sense. Then under the Reagan administration, this review procedure was accelerated. Meanwhile, social security was getting into deep financial trouble, but the disability trust fund was strong and healthy. It was so healthy, in fact, that last week money was borrowed from this fund to meet the financial obligations of social security to millions of retirees.

Now, bureaucrats charged with reviewing whether people are entitled to continued disability benefits appear to have worked themselves into a zealous frenzy to see just how many people they can disqualify, regardless of medical evidence to the contrary.

Look at a few local examples:

Under the law, any person with an IQ of less than 60 is considered disabled. But that didn't carry much weight for a 47-year-old man with an IQ of 43. Cared for by his mother, who happened to be hospitalized when his benefits were cut off, this man appealed to an administrative law judge and won back his benefits. But until the appeal hearing, there was no money coming in for his care.

A local man was sent to a doctor selected by the Government. The physician found that his back was 75 percent disabled. But the bureaucrats ruled that he was 75 percent physically fit and chopped off his disability.

A western Arkansas physician was angered that his heart patient was being cut off disability. "How can you stupid bastards even consider that this lady is capable of any type of gainful employment?" he wrote. The lady had a medical history showing her right ventricle is 1½ times normal, her heart pumps at only 40 percent of normal, she is physically weak and in constant danger of a heart attack.

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Would you believe this? A 23-year-old man, borderline retarded since brain surgery and blind in one eye (limited vision in the other), is confined to a Fort Smith nursing home and has to be told when to eat, bathe, and dress. But he had his benefits cut off.

Fortunately, people like this have a way to fight back, even though they and their families find themselves without benefits while they're fighting. They can appeal the bureaucrats' decisions to one of three local administrative law judges who reexamine the evidence. These judges, by the way, usually are the first representatives of the Federal Government to actually see those appealing their cases face-to-face in an open, on-the-record hearing. The decisions to cut off benefits have been made by bureaucrats shuffling stacks of Government forms that frightened, confused, and threatened the people who tried to fill them out.

Now, even the judges are receiving pressure from Washington to hold down the number of cases in which they reinstate benefits for disabled people. There have been rumors that the Fort Smith appeal office "could be closed" if things don't go more to the whims of Washington. All rulings against the bureaucrats from here now automatically go to Washington for yet another review.

Before anyone gets the idea the local law judges are just a trio of bleeding hearts wildly giving away social security dollars, consider a few more facts. Arkansas has the lowest rate of approved disability claims in the country. And it is the fourth lowest among the 50 States in reinstating benefits for those who appeal bureaucratic decisions to halt payments. The local judges do reinstate more disability claims than their counterparts in other Arkansas cities, but U.S. Representative John Paul Hammerschmidt is the only Arkansas Congressman who has a personal representative helping disabled constituents gather and present medical evidence in appeal cases. That means local people frequently have their appeals better organized and feel more confident because they have a member of the Congressman's staff sitting next to them at the hearing.

There is no question that the social security system is in serious trouble, and the very real problems must be faced. No one is suggesting that people who do not deserve benefits should receive them.

But insanely whacking benefits from people whose benefits are intended to help is wrong. That will not solve social security's problems. It makes about as much sense as rearranging the deck chairs on the Titanic; it will not change the ultimate fate of the ship.

Meanwhile, people right here where we live are hurting and being hurt because someone in Washington is playing games with statistics spit out of computers. Each of those statistics is a human being. Don't they deserve to be treated as such?

Life, Luck, and 30—Jack Moseley.

P.S.: Hammerschmidt currently is promoting legislation to halt the bloody butchery of insensitive bureaucratic surgeons.

With Hammerschmidt in the House and Pryor in the Senate, both attacking the problem, I hope our Government can find its humanity once again.

Senator PRYOR. For our first witness this morning, we have a panel. The first witness in the panel is Flanders Perry. Mr. Perry is from Alma, Ark., and despite suffering from some very serious medical ailments, he has experienced termination of his disability benefits, only to have those benefits reinstated after a cruel, and a very lengthy appeal.

Mr. Perry is accompanied by his attorney, William Cromwell, of the Rose, Kinsey & Cromwell law firm here in Fort Smith, Ark.

We will ask you to give any statement that you would like. Hopefully, you will keep it brief, and it will possibly be followed by a series of questions.

Mr. Cromwell, if you would like to speak on behalf of your client for just a moment, we would welcome your statement.

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PANEL NO. 1. DISABILITY BENEFICIARIES

STATEMENTS OF FLANDERS PERRY, ALMA, ARK., ACCOMPANIED BY WILLIAM CROMWELL, ESQ.; KENNETH REED, PARIS, ARK.; AND ANNA LEE McNOEL, FORT SMITH, ARK.

Mr. CROMWELL. Thank you, Senator.

Basically, a brief history of Mr. Perry's case would reveal that he was in a severe automobile accident in June 1966, suffered from spinal injuries, which have left both of his legs in a partial paralysis state since that time.

He also suffered a ruptured bladder, fractured vertebrae, underwent surgery, was in the hospital for a period of 7 months.

Since 1966, he has been unemployed and is unemployed at this time.

In December 1981, after no change at all in his physical condition, he received a notice from the Social Security Administration, that they wanted to review his physical state. They sent him to a doctor of the Administration's choice on December 29, 1981.

That doctor—a local doctor here in Fort Smith—reported back to the Administration that Mr. Perry's condition had not changed, his paralysis was still present, that his urinary and bladder functions were still ineffective and uncontrollable; in essence, that in a period of 15 years, he was still totally disabled.

Even in the face of this report from the Administration's own doctor, the Social Security Administration chose to terminate all benefits and this was after a report from a doctor of their choosing.

Mr. Perry's benefits ceased in March. He came to us and we went through the appeals process at the first level, which was denied. Request for reconsideration, which goes to Baltimore, Md., again denied. And then we had the opportunity of having a hearing here in Fort Smith before the Honorable Francis Mayhue, administrative law judge, and it was Judge Mayhue's determination—and quite rightfully so—that all doctors, including Dr. Stanton here in Fort Smith, who was the claimant's own physician, had said that for a period of 16 years, this man has had no change in his condition and was unemployable.

However, from the date of the cutoff until he received his check in October, he was, of course, without funds.

Senator PRYOR. I would like to ask this question, Mr. Cromwell. I would like to ask, if I could, Mr. Perry, to comment on how he first knew that his case was under review. How were you informed, Mr. Perry?

Mr. PERRY. I got a letter from Little Rock to fill out some papers. Me and my niece filled them out and sent them back. Then I got a call from Little Rock and they told me that I was able to go to work.

Senator PRYOR. That you were able to go to work?

Mr. PERRY. Yes.

Senator PRYOR. At this time, how long had you drawn disability?

Mr. PERRY. Oh, about 15, 16 years.

Senator PRYOR. And what is your age at this time?

Mr. PERRY. Forty-eight.

Senator PRYOR. What did they say that you were qualified to do, what sort of work?

Mr. PERRY. Well, they said sitting-down work or whatever. They said I ought to sit down and do something.

Senator PRYOR. They didn't say what type of sitting-down work you were able to do?

Mr. PERRY. No.

Senator PRYOR. Mr. Perry, let me ask this question: At that time, was your disability check cut off?

Mr. PERRY. Well, it was cut off in March, yes, sir.

Senator PRYOR. And how long a period, once again, from the time of the cutoff date did it take for you to get reinstated?

Mr. PERRY. It was 7 months.

Senator PRYOR. So you went 7 months, without receiving compensation?

Mr. PERRY. Yes, sir.

Senator PRYOR. What did this do to other benefits, for example, medicare benefits?

Mr. PERRY. Cut them off. Didn't have no medicare or nothing.

Senator PRYOR. How did you survive during this period?

Mr. PERRY. Well, if it wasn't for my sister and my brother-in-law, I couldn't have made it.

Senator PRYOR. Basically, they were supporting you and your family at this particular time?

Mr. PERRY. Just me, yes, sir.

Senator PRYOR. Did you, at that time, understand, Mr. Perry, the review process, did you have a knowledge of the review process that you were going through?

Mr. PERRY. Well, I kind of figured that they would, after I'd go to a doctor and after they'd see me, what position I was in, they would reinstate me, but they never did.

Senator PRYOR. Were you ever examined by a physician during this period of time?

Mr. PERRY. Yes. They had recommended Dr. Brown.

Senator PRYOR. And you went to Dr. Brown, and was it Dr. Brown that certified that you were ready to go back to work?

Mr. PERRY. No, he said I was still disabled.

Senator PRYOR. Said you were still disabled.

Then what did the Social Security Administration do?

Mr. PERRY. They said that wasn't enough evidence that he said, that I had to have something else. And I decided I'd go to my doctor and see what he thought, and he said I better get a new examination and send that to them and see what they say about that.

Senator PRYOR. Was there anyone affiliated with Social Security during this process that made a statement that your physical condition had improved?

Mr. PERRY. From what, from them?

Senator PRYOR. Yes.

Mr. PERRY. No.

Senator PRYOR. In other words, they said you had improved?

Mr. PERRY. Yes, ready to go back to work.

Senator PRYOR. And ready to go back to work?

Mr. PERRY. Yes.

Senator PRYOR. And they said you could do some type of work sitting down?

Mr. PERRY. Yes.

Senator PRYOR. What did they think you might become, a secretary?

Mr. PERRY. I don't know. With my education, I don't know.

Senator PRYOR. What are you trained to do, Mr. Perry?

Mr. PERRY. I was a butcher. I worked for Cudahy Packing.

Senator PRYOR. And what sort of a hardship did this have on—I know the hardship on yourself—but what about your family during this time? Were all benefits removed?

Mr. PERRY. No, my kids, they are too old to draw. And nobody but me.

Senator PRYOR. So you live alone and, basically, your family supported you during this particular time?

Mr. PERRY. Yes, my sister and brother-in-law, yes.

Senator PRYOR. When did you finally decide that you probably needed an attorney, a lawyer?

Mr. PERRY. Well, after they were so long about the way they talked to me and reinstating me, I figured I needed some help.

Senator PRYOR. When they talked to you from Little Rock, what sort of an attitude did they have? Were they friendly, unfriendly, or what? How'd they treat you?

Mr. PERRY. Well, they talked like—they was unfriendly, yes.

Senator PRYOR. In other words, they didn't seem to have much sympathy with your human condition?

Mr. PERRY. Yes, seems like they said, "You'd better start finding you a job."

Senator PRYOR. Mr. Cromwell, you may want to discuss some of these other facets of this case and feel free, if you'd like to.

Mr. CROMWELL. The only thing about Flanders' case that I've found, it's just pretty typical of the attitude that you run into with the Social Security Administration. I basically think it's characterized as shoot first and ask questions later.

In Mr. Perry's case, there was no way that he could work anywhere. He can't really sit down in a sitting position for very long because of circulation problems in his legs.

And they basically took the attitude that they were going to try and force him off the rolls by just removing his economic sustenance. And this is not the only case that I've handled that's like this.

This attitude is rampant in the Administration.

Most cases that people have come to me with, they come after they've been denied benefits and even in the face of the determination that their disability is static, unchanged, and will continue to be that way in the future.

Senator PRYOR. You've handled several of these claimants' cases, Mr. Cromwell, is that right?

Mr. CROMWELL. Yes, sir.

Senator PRYOR. Do most of the people involved, that you're dealing with and that you represent have any knowledge of the appeals process?

Mr. CROMWELL. No, sir. They are bewildered by the fact of the initial decision of denial.

I'll be quite honest with you: Of all the cases that I've handled, I've never had a claimant who was approved at the first level. I've

also never had a claimant who was approved at the appeals level in Baltimore, Md.

It's only when you get the claimant in front of an administrative law judge, and you actually have what you consider is a human person sitting across the table from you, that you have some consideration from the Social Security Administration.

Senator PRYOR. At any part in the review process, up until the time he got to appear before the administrative law judge, did Mr. Perry have an opportunity to face any individual in the Social Security Administration determining that he was able to go back to work again?

Mr. CROMWELL. To my knowledge, he did not.

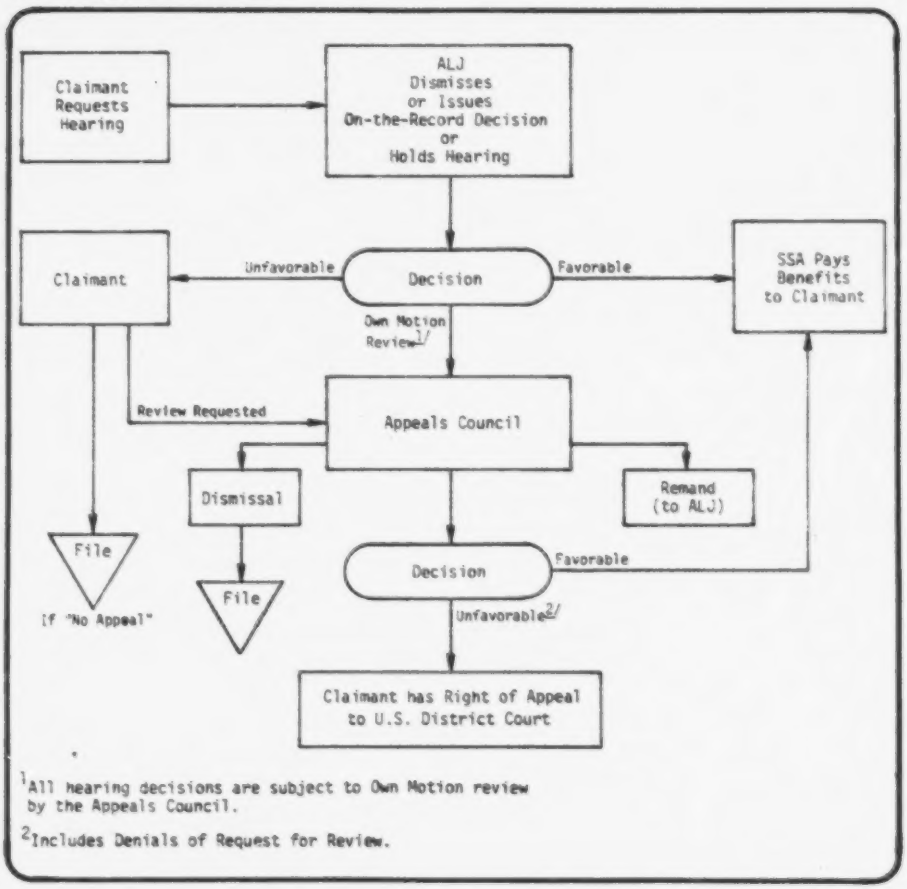
He was contacted by letter and then by phone, sent to Dr. Brown. Then he received his cutoff notice and then he went through the appeals process and until we sat down in front of Judge Mayhue, he saw no one.

Senator PRYOR. And during all this time, he was without disability payment during the appeals process?

Mr. CROMWELL. He was without any income from social security, and also because of the cutoff, he was forced to go back to his own physician and incur medical expenses for the report which wasn't covered by medicare.

Senator PRYOR. I would like at this point, for the record, to show that we do have a chart in our hearing room this morning, demonstrating the appeals process. And if there is any individual in this room, other than attorneys who deal in these matters every day, who understands this process, I wish you would let me know, because I don't understand it. And I don't think that anyone really fully understands it.

OHA Appeals Process



And I am sure that Mr. Perry and the 600,000 or 700,000 or 800,000 individuals who are going to be going through this process, don't understand it, either. And this was one reason that we had hoped the Social Security Administration would come this morning and explain it to us. But they decided not to.

And I will say that during the course of the hearing, we will talk about specific stages of this process and try to figure out some things to correct some of the inequities that we have.

If you would, Mr. Cromwell and Mr. Perry, just stay seated because we may have some other questions. But we do have our next witness and I believe that's Kenneth Reed.

Mr. Reed is from Paris, Ark. He is also a disability recipient who has also experienced termination of benefits. He was to be accompanied by Mr. Douglas, but Mr. Douglas was unable to be with us this morning due to other business.

Mr. Reed, you may proceed to tell us of your own experiences throughout this process, and I would be willing to say that there are several indications, in my opinion, that this 48-year-old former truckdriver, cannot work but, yet, I understand that his benefits were cut off.

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Mr. Reed, tell us in a few moments about your situation and then maybe I will have some questions.

Mr. REED. My case is similar to Mr. Perry's. I received a letter, I believe it was in September, that I would be cut off January 1, 1981. That I had suddenly become able to work. This was a letter from Little Rock,

I was cut off in December, after going through about the same process that Mr. Perry did.

Senator PRYOR. Now, had you been to a physician that told you you were able to go back to work?

Mr. REED. No, sir.

Senator PRYOR. Well, let's talk just a moment, if we could, Mr. Reed, about some of the physical problems that you have.

When were you put on disability benefits, to begin with, and for what reason?

Mr. REED. In 1976—I am an insulin-dependent diabetic—I think it was in October 1976.

Senator PRYOR. And tell me about other physical conditions that you have as a result of this.

Mr. REED. Well, I've lost all sensation in my legs and in my hands.

Senator PRYOR. You have no sensation in your upper or lower extremities, I understand.

Mr. REED. That's right.

Senator PRYOR. And this is the result of a diabetic situation?

Mr. REED. Yes, sir.

Senator PRYOR. And I understand, too, that because of your condition you have spells of temporary blindness; is that correct?

Mr. REED. Well, I've had two, yes, sir.

Senator PRYOR. Now, you are a truckdriver?

Mr. REED. Yes, sir.

Senator PRYOR. So with having spells of temporary blindness, I doubt if any trucking company would hire you; is that correct?

Mr. REED. That's right.

Senator PRYOR. What type of work did the Social Security Administration inform you that you were capable of doing?

Mr. REED. Well, they didn't say exactly. They said there was approximately 2,000 jobs that I could do, and that I was capable, I could lift 10 pounds.

Senator PRYOR. You could lift 10 pounds?

Mr. REED. Yes, sir.

Senator PRYOR. And no more?

Mr. REED. Yes, sir.

Senator PRYOR. But they did not tell you where these jobs were?

Mr. REED. No, sir.

Senator PRYOR. Would this be a job that would require moving about, sitting down, driving a vehicle, or what?

Mr. REED. They didn't say.

Senator PRYOR. Well, how long, then, at that point, were you cut off from disability, your checks stopped?

Mr. REED. For about 9 months.

Senator PRYOR. For about 9 months, you had no disability income whatsoever?

Mr. REED. No.

Senator PRYOR. And how did you survive during this 9-month period?

Mr. REED. Well, my wife was working and I had two boys in college, one at Arkansas Tech and one at College of the Ozarks. And then they quit at midterm and started working.

Senator PRYOR. In other words, your two sons had to quit college in order to support you; is this correct?

Mr. REED. Right.

Senator PRYOR. When your disability checks were cut off?

Mr. REED. Yes, sir.

Senator PRYOR. Now, how were you informed? You said you got a letter, from Little Rock, is that right?

Mr. REED. Yes, sir, a letter and I got a phone call,

Senator PRYOR. And then in the phone call, how were you treated by the person who called you on the phone? Just give us a brief description of that conversation.

Mr. REED. Well, they were very polite. They wanted to know what my daily routine was, what I did each day. And if I would be willing to go to their doctor that they recommended, which I did.

Senator PRYOR. And you did, and what did this doctor say about your condition?

Mr. REED. He said I was disabled.

Senator PRYOR. He said you were disabled?

Mr. REED. Yes, sir.

Senator PRYOR. But still the Social Security Administration said you were able to work and they cut off your benefits, and you went to no other physician in that period of time, or an additional physician?

Mr. REED. Other than my regular doctor.

Senator PRYOR. I understand.

Well, while you were in the cutoff period, Mr. Reed, did you look for another job?

Mr. REED. No, sir.

Senator PRYOR. You did not seek another job?

Mr. REED. No, sir.

Senator PRYOR. Do you know of any job that you might perform?

Mr. REED. No, sir.

Senator PRYOR. Have you had any people who have come to you and said, "We'd like for you to work for our company," or "our organization"?

Mr. REED. No, sir.

Senator PRYOR. You certainly haven't had anybody say to you, "We'd like for you to be a truckdriver," with the temporary blindness.

Mr. REED. No, sir.

Senator PRYOR. So the physician said you were not able to work, the Social Security Administration cut your benefits off; is this correct?

Mr. REED. That's right.

Senator PRYOR. Thank you. I ask you, if you would, Mr. Reed, stay with us for a few moments, we may have some other questions for you.

Now, ladies and gentlemen, our next witness is Anna Lee McNoel. Mrs. McNoel is from Fort Smith. And you are a widow?

Mrs. McNOEL. Yes.

Senator PRYOR. And your age is 48?

Mrs. McNOEL. Forty-eight.

Senator PRYOR. I always hate to ask that question of ladies, but I did want the record to demonstrate that because this is key to your case.

I believe that you have a sixth-grade education.

Mrs. McNOEL. That's correct.

Senator PRYOR. And you have been on supplemental security income disability for some years before termination.

Mrs. McNOEL. Yes.

Senator PRYOR. And following appeal the regional director requested that the Appeals Council in Baltimore reverse the State decision and put you back on disability; is that correct?

Mrs. McNOEL. That's right.

Senator PRYOR. I would like for the record to also show that Mrs. McNoel weighs 88 pounds, that her condition is chronic anemia, an unpredictable increase in the heart rate, acute asthma, she has one arm, a spastic colon, colitis, and the Social Security Administration told Mrs. McNoel that she could work.

She asked the worker what type of work she could perform—what did the social security worker say that you could do, Mrs. McNoel?

Mrs. McNOEL. They said that I could do secretarial work.

Senator PRYOR. Said that you could become a secretary.

Mrs. McNOEL. That's the way I took it, that's what they meant.

Senator PRYOR. Had you ever had any secretarial training of any nature?

Mrs. McNOEL. No.

Senator PRYOR. And you went through the sixth grade, as I understand.

Mrs. McNOEL. Yes.

Senator PRYOR. But they didn't suggest where you might find a job of becoming a secretary; is that correct?

Mrs. McNOEL. That's correct.

Senator PRYOR. How long were you cut off from disability, Mrs. McNoel?

Mrs. McNOEL. Well, they had an interview. That's when I lived in Oklahoma. They told me to come up there and to have an interview with them because Baltimore had requested that all people have to have interviews to see if they can go back to work.

I went up there and they filled out the application and, in the meantime, I moved to Tulsa and then they sent me the report, that after they had the interview from the case, in Baltimore, that I could go to work. It was around September 1981, but they let me continue to April.

I went to an attorney to ask for an appeal.

Senator PRYOR. The appeals process.

Mrs. McNOEL. Yes; and he told them that I did not have no income whatsoever, that I had to depend on that check.

Senator PRYOR. Right.

Mrs. McNOEL. So they went on and let me have it until April, but they told me that if I continued with them checks and they found I was able to work, I would have to pay all that back.

Senator PRYOR. I see.

Mrs. MCNOEL. I went back down here then, and they seemed to think that I still was able to work. And I went to this attorney here and he wrote to Washington and asked for inquest.

Senator PRYOR. Right.

Mrs. MCNOEL. They let me have a hearing in Fort Smith. I did not see the judge but he reversed it himself as a favorable decision.

But in the meantime, I was out of a check from May to September.

Senator PRYOR. From May until September, no check.

Mrs. MCNOEL. No check.

Senator PRYOR. How did you support yourself during that time?

Mrs. MCNOEL. I didn't.

Senator PRYOR. Did you have enough to eat?

Mrs. MCNOEL. Barely. My daughter and my son had a part-time job. I got behind on my utilities, my medicare was all cut off, I couldn't get my medicine.

Senator PRYOR. Your medicare was cut off?

Mrs. MCNOEL. Medicare was cut off, everything was cut off. I did not have money to buy medicine. I have to take heart pills, all that other stuff.

Senator PRYOR. Did any doctor state that you were able to go back to work?

Mrs. MCNOEL. No; they said I was not able to work.

Senator PRYOR. And yet, the Social Security Administration cut off your benefits?

Mrs. MCNOEL. That's correct.

Senator PRYOR. How did you feel when this happened?

Mrs. MCNOEL. Very upset, because I don't have a husband to support me like a lot of them do, you know. And that really upset me because that's all the income I had, you know, to live.

Senator PRYOR. And you went for several months without any income.

Mrs. MCNOEL. It was from May to September.

Senator PRYOR. May to September. I guess this caused not only financial stress, certainly, but also a great deal of mental stress and anguish?

Mrs. MCNOEL. Yes, it did, it sure did. It was really upsetting.

Senator PRYOR. Did you understand at that time the review process? Did the Social Security Administration tell you your rights or how to gain access to the review process?

Mrs. MCNOEL. No.

Senator PRYOR. And so you felt like you needed to hire an attorney?

Mrs. MCNOEL. Yes; that's correct.

Senator PRYOR. In order for him to process this matter for you.

Mrs. MCNOEL. Yes.

Senator PRYOR. I've heard a little bit about your case. Did the Social Security Administration ask you a lot of questions about how you supported yourself?

Mrs. MCNOEL. They did.

Senator PRYOR. Tell us a little bit about that.

Mrs. MCNOEL. Well, after the administrative law judge approved me, that I was disabled, that I get a favorable decision, then they

sent the papers to Dallas. Dallas requested me to go through all that again. They wanted to know who supported me. They wanted to know who paid my bills. They wanted to know a lot of things, like if I got a gift, if anybody gave me a gift, they'd cut it off of my income. And all that. I reported everything they needed to know.

They said, well, if they needed anything else, "I'll let you know." I said, "Ma'am, if they need anything else, I ain't got nothing else to report."

Senator PRYOR. There are literally thousands of individuals like yourself. Yours is a typical case, I think, and we've asked you to come today to tell your story so we can demonstrate to people what is going on in this process and try to come up with some constructive solutions to that process, which is very, very debilitating and, I might say, dehumanizing.

Mrs. MCNOEL. Well, going through all that really upset me because they already had all that information they needed right before them and why did they have to come up there and do all that over again, I don't know.

Senator PRYOR. Let me just ask all of our panel, are there any other comments that any of you would like to make for the hearing record and any suggestions that any of you might make for the record? As I have mentioned, this record will be given to all the Members of the Congress. As people who actually have been through this process, any suggestions that you have would be welcome.

I think all of us agree that some review should take place from time to time. We don't want people who are qualified to work drawing money from the system. That's not the purpose of this hearing today. The purpose is to demonstrate that many thousands are being removed in this process who cannot go back to work. And these three cases, I think, demonstrate clearly three particular situations that reinforce the hardships caused by the current process.

So if there would be any further comment from any of you, Mr. Cromwell, any suggestions you have, also, we would be glad to have them at this time.

Mr. CROMWELL. They don't have anything to say.

Senator PRYOR. Well, we want to thank each person who has come this morning and demonstrated his own particular situation and we're very appreciative of you coming before us.

One final question: Had there not been an administrative law judge in your three cases, would you still, today, be without income?

Mr. PERRY. Probably would. I'd probably just quit, give up.

Senator PRYOR. What about you, Mrs. McNoel?

Mrs. MCNOEL. Well, that's the way I feel there. If they didn't have the administrative law judges, we wouldn't have a chance.

Senator PRYOR. I see.

Thank each and every one of you so much for appearing this morning.

I would like to ask Dr. Buie and Dr. Staggs to come forward. We also have Dr. Taylor Prewitt.

We do have Dr. Taylor Prewitt with us this morning. We also have Dr. James Buie, who is an orthopedic surgeon at the Holt Krock Clinic in Fort Smith, and Dr. David Staggs, whose practice is

internal medicine, also with the Holt Krock Clinic. And both have attended a number of disability claimants in this area.

We want to welcome you today and we want to thank you for taking time out from your very busy schedules to come forward and make yourselves and your testimony available.

First, I think that you have been sitting through some of the hearing this morning and I think you can begin to get an idea of some of the problems that some of these individuals are facing, not only in this area, but across the country. I would like, if I might, to pose several questions to you and I want you to feel free to interject any thoughts that you have and just give your ideas on how we might improve this process.

I would like to ask all three of you, and feel free to say anything you would like or go in any order you would like, what do you feel are the most significant problems with the present process of establishing disability or the ability to go back to work?

Dr. Staggs, you seem ready to answer.

PANEL NO. 2. PHYSICIANS

STATEMENTS OF DR. DAVID STAGGS, INTERNAL MEDICINE, HOLT KROCK CLINIC, FORT SMITH, ARK.; DR. JAMES BUIE, ORTHOPEDIC SURGERY, HOLT KROCK CLINIC, FORT SMITH, ARK.; AND DR. TAYLOR PREWITT, CARDIOLOGIST, COOPER CLINIC, FORT SMITH, ARK.

Dr. STAGGS. Senator, one of the big problems that I have perceived in my role as a consultant for the Social Security Administration, is that I am so frequently totally flabbergasted by the decisions that are made, supposedly on the basis of evidence that I have provided to the Social Security Administration.

It seems that the data is being either ignored or erroneous conclusions are being arrived at from the data that we're providing them.

A classic example recently of a man that I saw, came back to my office very upset because he had been terminated and wanted to know why I said he could work. The simple truth was I did not say he could work. And, in fact, on my letter to the Social Security Administration, I said that I considered him permanently and totally disabled.

Approximately a week later, I got a letter from the Social Security Administration asking me not to put that type of information in my reports, I presume because that made the appeal process much easier for the claimant.

I returned a letter to them, stating that in good conscience, I didn't feel like I could leave that information out because of the hardship that they were imposing on this individual.

I'd like to digress there a moment. Several people have been asked if a reviewing physician had told them that they could go to work. We were specifically asked not to provide that information.

People obviously ask me at the end of an interview to tell them and I, quite frankly, told several of them it probably doesn't matter what I think because I've been wrong more times than I've been right, that if the data that I send to them in my mind justifies a

finding of disability, but the decision is exactly opposite to the data that I have presented.

Senator PRYOR. Basically, you're being told, in effect, what to say and what not to say by the Social Security Administration?

Dr. STAGGS. I'm very specifically told not to say anything to the patient concerning the examination, as far as whether or not I think they will be found disabled.

Senator PRYOR. How many cases do you recall where you have told the Social Security Administration that this patient, John Jones or Mary Smith, is not able to work and that they are still disabled? In how many cases has the Social Security Administration basically declared that person able to work?

Dr. STAGGS. I can't really give an exact number because I don't get feedback on those things. I never know, although in specific instances I have had this come up frequently, and I've also had it happen on my patients whom I have provided the medical information for.

So it's not an infrequent finding and it's especially not infrequent since this review process has been instituted. I've been doing this for about 5 years and I've seen a dramatic change in the last 2 years on the number of refusals.

Senator PRYOR. Well, I really appreciate your statement Dr. Staggs, and possibly we will have another question or two in a moment. Feel free to make any additional statements.

Dr. Buie, I wonder if you might just give a general statement and then we will ask a question, or two.

Dr. BUIE. It has been my experience, in review of individuals with musculoskeletal disorders that have social security claims, that many of the same problems that Dr. Staggs has noted has also been personally experienced. In past years, I have tried to avoid listing individuals as being unable to work, except in cases that I felt the case was so totally dramatic that there was no doubt, and in cases where I had been repetitively asked for individuals that were being rereviewed. The Social Security Administration guidelines for examination include instruction to avoid specific conclusions of disability.

In regard to submitted information from the private physician to the review board, I find it difficult to understand interpretation and decisions that are made. I understand that qualified physicians of the review board are making those decisions and on occasion, the conclusions they arrive at are very disconcerting. I think these decisions not only involve reviews that consist of refusal but also acceptance of some individuals. I think there is the presence of error occurring in the form of decisions for individuals that have some certain circumstances that they should not be reaccepted and they are, and some individuals that should be reaccepted to the social security program and they are not. More recently, I think that the needy individual has been the victim of the system and has been refused the benefits of the program.

Senator PRYOR. Have you ever been told by the Social Security Administration not to tell the patient about his condition, or whether he should be able to go back to work or not?

Dr. BUIE. Not directly.

When I started reviews some 12 years ago, it was, the information supplied to us, was an instruction that we would simply submit to the board the physical findings of the individual being reviewed and they would there make the determination as to whether they were able to or able not to work, and more or less followed that. And I've told many patients, "Put down for me that I'm not able to work," or "Am I able to work," I've told them that I really can't do that. It doesn't do them any good.

Senator PRYOR. Have you seen many cases where you feel that a person is not able to work, but that the Social Security Administration has then determined that the individual is actually able to work?

Dr. BUIE. I think in the past month, I have at least five outstanding cases of people that are unable to work and, at present, are either in the review or have been refused.

Senator PRYOR. And then have their benefits cut off during this process; is that correct?

Dr. BUIE. Yes.

One plea I would make is that I think that until an individual's review is completed, their benefits need to continue.

Senator PRYOR. I strongly support that. I'm glad to hear that from a physician.

Dr. Buie, I don't know if you're qualified to speak as a psychiatrist or as a psychologist, but I think most doctors should have some opinion as to the mental trauma involved, and what effect it has when a person is going through this bewildering process and they feel like they may be cut off of disability? What do you see in those patients?

Dr. BUIE. When I began practice some 12 years ago and had the opportunity to do many social security reviews, the guidelines supplied us at that time required submission of the physical findings of an examination of the individual being reviewed. The determination as to whether that individual is able or not able to work was determined by the individual reviewing my submitted information. I have been asked by many patients to put down on the record that, "I am not able to work or I am able to work" as the patient under most circumstances feel that the examining physician is the individual that determines whether or not they are accepted to the program and whether or not they are able to receive social security benefits.

I can state from personal observation, that the individuals that I have seen that have experienced this are literally at their wits' end. Many of them have had no income and have no basis for any savings and are truly in a destitute position.

Senator PRYOR. Not only financially but, in many cases, mentally and also physically, of course.

Thank you, Dr. Buie. We may ask you another question in a moment. We know that you doctors are busy and you probably have a lot more people to see.

I will ask Dr. Taylor Prewitt now to speak, and we would appreciate your statement.

Dr. PREWITT. One technical problem that I've observed in the process—let me explain my role in this procedure—I have not recently been reviewing cases. I am a private physician. I am a cardi-

ologist and I follow a number of my patients with heart disease who become involved in this process by receiving a letter of denial. I then receive a request for information from Social Security in regard to the patient's problem.

Dr. Staggs mentioned the lack of feedback and I suppose that there's natural frustration in any problem, in any matter of communications, when one simply casts letters into the void but doesn't receive a response. It naturally leads to a feeling that there's a lack of communication and I've experienced this. I have particularly felt that I had the answer which would explain and sort out the problems but the proper questions weren't being asked.

For instance, if I have a patient who has had a heart attack and if it involves the front part of the heart, which we call an anterior myocardial infarction, it may be that fairly sophisticated studies have been done which would demonstrate that a significant portion of that patient's heart is no longer functioning and that he doesn't have enough of what we call cardiac reserve left to work.

But the questions that I'm asked don't seem to refer to the studies which answer and delineate that but they ask questions, "Is the heart enlarged on X-ray?" Well, maybe it's not, but I have other data that shows that the patient really doesn't have very much heart left. But I have a feeling that I'm answering questions which I keep saying, "Well, the catherization data shows this, yes," but, "What does the chest X-ray show; was the heart enlarged?" No, it wasn't enlarged and that's that.

Senator PRYOR. Do you feel that your recommendations or your findings, when you send them to the Social Security Administration, that those findings are adhered to, or are they rejected?

Dr. PREWITT. Well, I suppose that I would wish that my bottom-line recommendation as to ability to work, or not, should be adhered to. I'm not sure that that would be quite appropriate, in view of the fact that I serve more as the patient's advocate than as a judge. But I would like to feel that the data that I present is understood and appreciated, so that is sort of like if a bridge player lays down his hand, that the other players around would know that he's got a grand slam or whatever it is, without having to play through it or explain every process.

Senator PRYOR. Do you think that the Social Security Administration—I will ask this to all of you physicians this morning—do you think that the Social Security Administration has a hard time finding the appropriate doctors to perform consultative examinations? Is this a difficult thing for them to do and how does it affect you in your practice?

Dr. PREWITT. I don't know. David, do you know?

Dr. STAGGS. I can't really answer that.

Senator PRYOR. A moment ago we were talking to some other witnesses about denial letters.

Have any of you physicians seen the letters of denial? Do you happen to have one, Dr. Staggs?

Dr. STAGGS. Yes, sir.

Senator PRYOR. And you've read some of these letters your patients did receive?

Dr. STAGGS. Yes, sir.

Senator PRYOR. How would you characterize these letters, Dr. Staggs?

Dr. STAGGS. I brought this one because it—the only reason I got this one is because this is a patient of mine and had been seen and examined by another physician. A lady handed us this letter while she was in bed in the intensive care unit here at one of the local hospitals and I'd like to read it to you.

This is a lady who has since died. She died approximately 2 months after receiving this letter. She had terrible heart disease and also asthma and was essentially in the hospital continuously for 6 months.

It says, "The following reports were considered in deciding your claim. We did not obtain any other reports because the one shown below had enough information to evaluate your condition:

"Sparks Medical Center reports, reports from Dr. David Staggs, reports from Dr. David Nichols—" who is a lung specialist at our clinic.

"You said that you are unable to work due to asthma and a heart condition. The medical evidence shows that you have been treated for a heart condition and asthma. We realize that your heart condition and asthma prevent you from doing your job as a motel desk clerk, but it does not prevent you from doing other types of work requiring less physical exertion."

I might point out that she very astutely pointed out that her job as a motel desk clerk did not require a great deal of physical exertion.

"You are able to do other jobs which require lifting of not more than 10 pounds and standing and walking for up to 2 hours of an 8-hour workday."

This lady couldn't walk across the room. This letter was received on February 17, and she died on April 12.

Senator PRYOR. And she had been cut off from disability and told she could go back to work.

Dr. STAGGS. The thing that infuriated me about this was that they were using information that supposedly I supplied them to make this determination.

Both Dr. Nichols and I wrote them a letter stating if that's the conclusion they came to from our data, that it was a wrong conclusion.

Senator PRYOR. Well, in your opinion, Dr. Staggs, is the complete medical record actually reviewed by the Social Security Administration?

Dr. STAGGS. I think Dr. Prewitt pointed out one of the big pitfalls. Some of the criteria that they use to determine disability are just not adequate. They will use data that we might have used 20 years ago because that's all we had available, when we have more sophisticated information that would support a diagnosis of disability.

So to answer your question, I think they don't avail themselves of all the data that's available. Or if they do, they choose to ignore it.

Senator PRYOR. When you're asked by the Social Security Administration to perform or consult in an examination procedure,

are those instructions which are given you by the Social Security Administration adequate for what they are looking for?

Dr. STAGGS. They specifically ask or tell me the areas that they are concerned about and they also outline what laboratory tests, X-rays, and that sort of thing that they want to have done. And I have no leeway to make any change in that unless I feel so strongly about it that I can contact them and get approval to do that.

Senator PRYOR. I wonder if there would be another additional statement that any of you would like to make. I am very appreciative of the time you have spent with us today.

Dr. Buie, maybe you'd like to comment.

Dr. BUIE. In this regard, an attempt to classify the actual degree of disability that exists in an individual would present a much more practical and serviceable system. An all or none system where an individual can either be disabled or capable of earning a living is simple but not very realistic and when technically applied to specific individuals, leads to a great deal of inequalities that are difficult to resolve and deal with.

In regard to the above, and one of the things that David has mentioned that is frequently seen in one's practice, is the individual that has been denied a claim on the basis that they can do some other type of work. For example, I actually but not recently have had a phone call from Social Security with the individual inquiring as to whether an individual can sit and answer the telephone in regard to ability to perform work. Even a quadraplegic can do that with some help, and he is obviously considered totally disabled. I realize that is an extreme example and I do not want to imply that this is a common or standard practice in regard to the Social Security Administration inquiring as to whether individuals can do extremely remedial activity. However, the point is that there are people that are disabled that may perform certain activities while there are people that have limited physical impairment that are unable to work because of inavailability of jobs, or in some cases, lack of educational background. In the way of an example of an individual that has a limiting or practical disability is that individual who has had a back or spinal condition that has required surgery and he is able to perform light work but there is no job opportunity of this nature available to him. Under our present system, the patient can receive no benefits unless he is declared totally unable to work in any capacity. Some alterations in the system might well benefit an individual even though it would be of limited benefit and might be more appropriate than the present system. The present system is complex and there are a lot of problems. I do not know the answer.

Senator PRYOR. There's been a continuing problem of different medical standards used by the Social Security Administration and the administrative law judges and, perhaps, the private physicians. Do you see this as a problem and should there be a uniform medical standard adopted, and is that possible?

Dr. BUIE. I think that it could be worked on and probably developed.

Senator PRYOR. I guess that would probably have an indirect effect on something you alluded to and that's partial disability.

I would like to just say, gentlemen, that we are very appreciative of your appearing this morning. We know how busy you are and I would imagine, folks, that after these doctors have come up here and testified the way they have, that they may not get any more business from the Social Security Administration but, we consider their testimony very valuable. I'm sure that our colleagues in the Senate and the House will appreciate your testimony, your insight, and your compassion.

Thank you very much.

Let's ask Michael Pritchard, who is the executive director of the Ozark Legal Services in Fayetteville to come forward. I think Wanda Coleman, Mary Spence, and Bonnie Nunes will be present with Mr. Pritchard this morning.

Ladies and gentlemen, just a word about our next panel here. We're moving along very well this morning and I think we're moving along well enough so that at the end we might hear from other individuals who might care to give some form of a statement this morning.

Once again, I would remind you that we'd like to keep those statements short because we have such a large turnout.

Let me tell you just a little bit about Michael Pritchard and the group that he represents.

He is the executive director of the Ozark Legal Services. They provide legal services for the poor and for the underprivileged in the 14-county area of northwest Arkansas. They handle mostly SSI disability cases because regular disability is for generating, and these cases are referred to disability attorneys.

One of the big problems they see is that oftentimes claimants are too poorly educated or unaware that they can retain their benefits through appeal until it is too late.

He will discuss some of these problems this morning. He has a statement to read. He's going to go through it very rapidly and hit the high points of it. So at this time we will turn the microphone over to Michael Pritchard.

Mike, if you would take that statement and go through it as rapidly as you can.

STATEMENT OF MICHAEL PRITCHARD, EXECUTIVE DIRECTOR, OZARK LEGAL SERVICES, FAYETTEVILLE, ARK., ACCOMPANIED BY BONNIE NUNES, PARALEGAL, HARRISON, ARK.; AND WANDA COLEMAN AND MARY SPENCE, SSI BENEFICIARIES

Mr. PRITCHARD. Thank you, Senator.

On behalf of all the clients of Ozark Legal Services who have disability problems, we would like to thank you for the opportunity of appearing here today.

Appearing with me are Mrs. Coleman and Mrs. Spence, who we are presently representing, and also Bonnie Nunes, who is a paralegal at our Harrison, Ark., office.

It would be hard for us to overstate the anguish and disruption that is imposed on people like Mrs. Coleman and Mrs. Spence, some of the most vulnerable citizens in our country, by the threat or the actual interruption of their sole means of existence, their SSI benefits.

Mrs. Coleman, at the time she was notified of her termination of benefits, was 48 years old, with an eighth-grade education. She is suffering from multiple sclerosis, heart disease, and depression.

Four months prior to the determination by the Arkansas agency for disability determination, a report by the Arkansas Department of Social Services found Mrs. Coleman unable to prepare her own meals, in need of assistance in bathing, unable to perform household chores, and at times, needing assistance even to walk.

Despite this, she was found in July 1982 to be not disabled. Fortunately, through the efforts of Ms. Nunes, we were able to restore Mrs. Coleman's benefits by obtaining a favorable decision by an administrative law judge.

However, there is no compensation for the anxiety Mrs. Coleman suffered during her appeal, and her continued insecurity of not knowing when her benefits will again be subject to arbitrary termination.

Mary Spence's situation is even more severe. Mrs. Spence suffers from obstructive pulmonary disease. She has been subject to numerous hospitalizations, including several within the last year, and her condition is described by her doctor as follows, and I quote:

> I have seen Mrs. Spence at the brink of death several times and I've never seen her that she isn't wheezing. I would not employ her and any employer who does is either compassionate or an utter fool. I see no way for her to hold gainful employment.

In spite of this compelling medical evidence, the administrative law judge in a decision dated October 15, 1982, upheld the disability determination office's decision that Mrs. Spence was no longer disabled.

We are in the process of appealing this to the Social Security Administration's Appeal Council, but we anticipate we will have to go to U.S. district court and Mrs. Spence can anticipate a significant delay in getting her benefits.

With regard to these clients' cases, they are better off as supplemental security income beneficiaries than they would be as social security disability recipients, because they have the right to continue their benefits, through the administrative law judge hearing. Whereas SSD beneficiaries' termination is almost immediate.

We would urge a number of reforms to improve this present situation. They can be divided into three areas: First, improvement in the quality of pretermination decisionmaking by the disability determination agency; second, providing ready access to representation for claimants subject to termination of benefits; and finally, maintenance of benefits to all claimants until they have received a full measure of due process to which they are entitled.

We will present these proposals in outline form only at this time, but we would be happy to work with the committee staff to provide additional support and detail for each of our proposals and to assist in drafting appropriate legislative language.

The amendment to the Social Security Act in 1980, which required an acceleration of the review of the continued disability status of existing recipients, has been a failure.

Rather than culling nondisabled individuals from the disability roles, it has resulted in the indiscriminate termination of many eligible individuals. Many of these individuals could be identified

prior to an administrative hearing if an appropriate agency investigation was undertaken.

For that reason, we would request that Congress mandate that the State disability determination agencies be required to have face-to-face interviews with disability recipients prior to their termination.

These interviews should take place within reasonable traveling distance of the recipients' homes with consideration for any travel limitations which the recipient may have.

This interview would provide the agency with reliable information concerning the recipient's present condition, which is necessary to determine the type of medical examinations and reports that would be appropriate to evaluate the recipient's eligibility.

Many of the recipients are of such limited educational background or suffer from developmental disabilities, which render it almost impossible for them to respond adequately to the present written requests for information. Those individuals who are able to provide the agency with an upate of their condition by completing questionnaires should be permitted to waive this interview which we have proposed,

However, every recipient should be given the opportunity to fully articulate their condition and the type of medical treatment they are receiving prior to an initial determination that their disability has ceased.

While this requirement will result in some additional cost at the State level, there will be savings realized in the reduction of erroneous decisions which then lead to full-scale administrative appeals and the possibility of further litigation in the district courts.

Second, we would support an amendment to the act, which was proposed earlier in the present congressional session, to give SSD recipients the same due process rights as were described earlier today by Senator Pryor.

In terms of SSI recipients who wish to continue their payments through the initial steps of the appeal process, we would note that the 10-day time period to request this continued aid is totally inadequate. Many of these individuals, particularly in northwest Arkansas, live in isolated areas and require the assistance by the family members or other individuals to interpret the most basic written notice.

A 30-day time period would provide recipients with an adequate amount of time to obtain assistance where necessary in reading the notice of termination, to obtain counsel, to evaluate their continued eligibility for benefits, and then to inform the agency that they wish to appeal their termination.

We would ask Congress to mandate a 30-day time period to request continued benefits, pending appeal for SSI recipients, and to extend this procedure to SSD recipients.

In addition to arbitrary termination procedures, disability recipients now face tremendous obstacles in obtaining representation with respect to their claims.

The vast majority of recipients do not have the ability to pay a private attorney a retainer. Therefore, their only hope of being represented is either through Legal Services or to utilize the provision

that permits 25 percent of any back benefits to which they may be entitled at the end of the process to be paid to their attorney.

Legal Services has had budget cuts in an absolute amount of 25 percent over the last 18 months. This, coupled with inflation and additional requirements for involvement of the private bar, has reduced the amount of money we have for direct services by almost 45 percent.

Simply stated, we are not able to help all the social security recipients who deserve and need our aid. While the private bar has made serious efforts in our area to fill some of this gap, there does not exist a fair and adequate means of compensating for the level of representation which is necessary to meet the massive number of terminations being imposed by the Social Security Administration.

Furthermore, in the instance of disability recipients who prevail after their benefits are terminated for a period of time, it is a manifest injustice to have them pay a portion of their back benefits to correct an error of either the Social Security Administration or the State disability determination agency.

To remedy this situation, Congress should require the Social Security Administration to be responsible for a portion of the attorney fees for any recipient who prevails in either their initial claim or any termination action.

Appropriate and conservative limits could be set on the amount the Social Security Administration should be required to pay, such as $500 for cases settled prior to administrative hearing, $1,000 for cases settled through an ALJ hearing, $2,000 for cases which require appeal beyond the Social Security Administration.

The present 25 percent of back benefits available for attorney fees could be utilized to supplement those amounts in cases which require attorney time over and above the amounts noted above. We are not proposing that the full cost of representation be carried by the Social Security Administration but, rather, that they be required to bear part of it in the cases where they are in error.

The purpose of the Social Security Act is to provide benefits to those who are entitled. The cases of Mrs. Coleman and Mrs. Spence demonstrate that aggressive, informed advocacy is absolutely necessary to achieve this purpose. In instances where the advocacy is necessitated by the incorrect decisions by the Social Security Administration or the disability determination agency, the cost should be borne by them, not the individual recipient.

Senator Pryor, we thank you for this opportunity to appear here and we will answer any questions that we can.

Senator PRYOR. Thank you very much. We appreciate your statement, Mike.

Now, Mike, you're an attorney, and a very fine attorney, I understand, and I'm going to ask you a legal question.

These ladies that you are representing at this time in the disability process, were basically cut off from disability, they were determined to be able to work and their disability checks were cut off before they had a hearing; is this correct?

Mr. PRITCHARD. In their instances, it was not because they are SSI recipients and they were fortunate enough to get into our of-

fices within the 10 days, so we were able to file the necessary request to continue their benefits.

However, we have many people who are not in this situation, who, in fact, come in after the 10 days is past. It is a very short time period for people to react. So in their situation, we had the opportunity for the hearing before they were cut off.

Senator PRYOR. But in many, many cases that you see, they are cut off before a hearing right is granted; is this correct?

Mr. PRITCHARD. This is absolutely true, as they are all SSD cases.

Senator PRYOR. Now, once again, I'll ask you as an attorney, is this not possibly a violation of due process? And why wouldn't this issue be ripe for a Supreme Court interpretation?

Mr. PRITCHARD. Well, the fact that SSI recipients have a right to request their benefits be continued is the result of one court case.

Senator PRYOR. The *Goldberg* case?

Mr. PRITCHARD. Yes, the *Goldberg* case, where they mandated this. The court has looked at the question of SSD recipients and they have said because it is not a "welfare program," because there is the possibility that a person has other resources or assets, they did not require, as a matter of constitutional law, that they receive this hearing.

However, in both instances, Congress can grant as a matter of just basic fairness, due process hearings as a statutory requirement.

Senator PRYOR. Mike, recently we had a hearing in Washington on this matter, disability cutoffs and the process. I remember at that hearing, I asked one of the Social Security Administration officials in Baltimore,

> Are we operating under a quota system? In other words, have you folks determined in Baltimore to cut off a certain percentage of those people involved in receiving disability and are you mandated to come up with a certain number of people who are going to be cut off the rolls?

And the answer was, "No, but sometimes we go by our instinct and intuition." I felt like, very honestly, that I was not being told the truth. I felt like—and I feel like that today—that there is a quota system. I think Arkansas' quota is higher than the Nation, to be honest, especially in this part of the State.

In your dealing with the Social Security people, for the clients that you represent—in working through the appeals process—is it your own feeling that we are under a quota system to rid the system of a certain percentage or certain number of claimants and recipients?

Mr. PRITCHARD. No one will admit that, but from the things I've seen, I can draw no other conclusion. You look at a case such as Mrs. Coleman, she has multiple sclerosis. That's a progressive disease. It does not get better. She was found to be disabled 5 years ago. The disease has continued, it has progressed. Yet, she's taken off disability. And it is illogical, and when you are faced with this kind of illogical case time after time after time, you have to assume there is something else happening and that people are not actually looking at the facts.

They are saying, "I have to make a certain number of decisions." I think there are also other ways in the system that they are putting pressure to keep people from obtaining their proper benefits.

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In most instances, we're successful at the level of the administrative law judge. However, I know that the Social Security Administration adopted a special policy with respect to the Fort Smith office, which is characterized by some very humane and concerned administrative law judges. They have adopted a policy of reviewing every decision after the hearing that is favorable to the claimant. And this is a not-so-subtle way of putting pressure on the judges to start changing their decisions.

I am happy to report that so far the judges have stuck to their guns. But I don't think you should permit a situation to exist where somebody has to buck the system in order to do their job.

Senator PRYOR. I think the administrative law judges in this particular area of Arkansas, who will testify momentarily, have all of their decisions automatically reviewed by the Government in Baltimore and I think we're probably one of the only regions in the country in that situation.

We will have the administrative law judges testify to that particular situation in a very few moments.

Mike, how do you prepare these cases? How do you get ready for the review process for these clients?

Mr. PRITCHARD. Well, there are two things, You look at all the material in the file to see what was brought up when they were initially qualified. Then, in most instances, you need to get additional medical reports, which is a real hardship for many of our people because they don't have the money to pay for additional medical examinations.

We have found examinations by doctors hired by the Social Security Administration very unsatisfactory, that they are very perfunctory. They do not relate the information they get to the person's ability to perform work, whereas if we can get a private physician to look at them, they are willing to answer questions and give us information concerning how that person's limitations would interact with their ability to perform work. And so it's mainly a matter of gathering that medical evidence, talking to members of the family, and then bringing all of this together for a hearing.

Senator PRYOR. But in most cases, the Social Security Administration does not look at the complete medical record; is that correct?

Mr. PRITCHARD. I do not know. I can't speak for them as to whether they look at the medical records they have already, but they do not make the effort to go out and find the information that's necessary from the treating physician, as the doctor said, they don't ask the right questions. Their questionnaires are sort of checkoff lists or fail to ask for facts which are directly related to someone's ability to hold down a job.

One question I've never seen is, "How many days out of 10 could this person be expected to make it to work and sit through an 8-hour day?" They don't ask that because if it was asked, in the majority of cases, the answer would either be none or 3, or 2, or 4 at most, and they don't want to hear that answer.

Senator PRYOR. If the Social Security Administration says to Mrs. Coleman or Mrs. Spence, "You are able to go to work and you can perform this type of activity or this type of job," do they give any idea where those jobs might be found, or any help, or any as-

sistance in any way of helping them to secure even the right way to approach or find such a position?

Mr. PRITCHARD. Absolutely none. They will just say, "There are 2,000 jobs in the State that meet this requirement," but there is never any specific referral, or attempt to pinpoint a job or work a person can do. Very often, it's just couched in terms that they can do sedentary work. The type of job classifications they utilize are almost totally related to the amount of physical strength that is required. They rarely address problems, such as whether a person could work consistently over a period of time, or what sort of environmental factors could they tolerate. For someone like Mrs. Spence with a breathing problem, any factory or workplace that had fumes or dust would be impossible even if she had the physical strength to perform the work.

Senator PRYOR. Mike, I just have one or two more questions. I think it might be well for you to mention some specific problems that the older citizen who has been drawing disability for a number of years might have. For example, an individual 55 to 60 might undergo special problems, when all of a sudden they are cut off of disability and they are back out in the job market once again without any income. What particular problems are those? I believe 58 percent, actually, of disabled are 55 or older.

How can we deal with this particular situation?

Mr. PRITCHARD. Well, I think there are two sets of problems: One is that those people are just much less attractive to employers, particularly with the overlay of their past physical problems. An employer is going to look very much askance at someone who is older, particularly for the jobs which require little experience. This is a problem since many of our clients, and many of the older people in this area of the country, have very limited educational backgrounds. These people have tremendous difficulties.

The other problem is that older people tend to either live alone or live with another elderly person so there is not the availability within the household of other sources of income. There is not someone else who can go out and try to work. They are either by themselves or with someone who is equally limited in their ability to work. So it's a much more dire situation for those people.

Senator PRYOR. I wonder if any of the clients that you have with you this morning, Mike, would like to make any statement. Any particular thing they think you might have left out, or overlooked, or didn't emphasize enough, we'd be glad to hear from them.

Mrs. COLEMAN. Well, first of all, Senator Pryor, I want to thank you for answering when I needed help. It does create a problem for us. If they could create a job that I could do, they could have my check. But I don't seem to be able to find anything I can do.

Senator PRYOR. Thank you, Mrs. Coleman.

Let me just state for the record that Ozark Legal Services is a federally funded legal aid service which has experienced severe funding cuts during the past 2 years.

And, by the way, I'd like to say I am a strong supporter of the legal services area and I want to pledge my further support. I think that this is further testimony this morning that we need to keep this program ongoing because there are so many thousands out there who need your services, Mike, and we deeply appreciate

your concern and your compassion. Also, if you'd like to make any additional statements, we'd like to hear from you at this time.

Mr. PRITCHARD. None, Senator, but I want to thank you, both for your assistance—individual assistance—to our clients that they have received so many times; and also your support of legal services, so we can continue to help them in maintaining their benefits.

Senator PRYOR. Thank you, Mike.

In your statement you not only pinpointed very well, I think, some of the problems that we face, but I would like to thank you so much for offering some constructive solutions and suggestions, such as for changes in regulations and legislation.

I will certainly look very closely at your recommendations because you've been on the firing line and you've seen these cases every day and we value your opinion very, very much.

Before you leave, and because you are an attorney, I would like to mention that we have—I am not going to call him to the stand this morning—but we do have the immediate past president of the Arkansas Bar Association with us and that is my friend and yours, Walter Niblock from Fayetteville.

The reason I'm not going to call Mr. Niblock is that he's very, very longwinded and it would be 3 o'clock before we finish [laughter]. No, he's our very good friend. Walter, we appreciate you representing the bar association this morning.

Mr. NIBLOCK. We appreciate you coming down here very, very much.

Senator PRYOR. Thank you very much, Walter.

And thank you, Mr. Pritchard, and the ladies who have come with you this morning.

Mr. PRITCHARD. Thank you very much, Senator.

Senator PRYOR. Now, ladies and gentlemen, we have two additional witnesses before we talk to our administrative law judges.

We will ask Ken Patton and Bill Luce to come forward, if you would.

These two witnesses, Mr. Patton and Mr. Luce, let me tell you what they do. I just asked Mr. Patton if he had brought a bodyguard with him this morning and he said he didn't. Mr. Patton is the director of Disability Determination Office for the State of Arkansas. This office is in a very unique situation. It is federally funded but it's basically operated by the State of Arkansas. He's accompanied this morning by Bill Luce, the assistant director of Disability Determination Office.

I know that Mr. Patton and Mr. Luce are well-qualified for their positions. Mr. Patton has held his since 1975, and for those of you who are not familiar with the State Disability Determination Office, let me say that it is the primary role of this office to develop all necessary medical and vocational information, evaluate it, and to make an initial determination of whether a person meets the Federal statutory definition of disability. Now, that's a mouthful and that's complicated.

We are particularly interested in getting Mr. Patton's viewpoint on the various problems which have been associated with the newly mandated, continuing disability reviews which are now being conducted, as well as his thoughts on the disability determination process in general.

First, Mr. Patton, I would like to assume that you've been here during the course of the hearing, that you've heard several witnesses this morning, and I would like to ask if you have a statement or if you would like to begin by responding to any of the statements made or to the issues raised.

STATEMENT OF KEN PATTON, DIRECTOR, DISABILITY DETERMINATION OFFICE, STATE OF ARKANSAS, LITTLE ROCK, ARK., ACCOMPANIED BY WILLIAM LUCE, ASSISTANT DIRECTOR

Mr. PATTON. Thank you, Senator.

I feel that you do have basic background about how the program works, being a Governor in the past and now a Senator, and having had the opportunity to know how the disability program works in the State of Arkansas.

First of all, I'd like to speak somewhat to the organization.

Our primary function is, as you indicated, to determine who receives disability in the State of Arkansas, title II and title XVI, social security and supplemental security income.

As you know, prior to 1975, we had a contract with the Social Security Administration. The 1978 disability amendment changed that and we now operate under regulations furnished to us by the Social Security Administration.

Our primary responsibility is to carry out this function. These people pay our salaries and send us the regulations that we make decisions on. Based on their criteria, despite what people feel to the contrary, we do it effectively, efficiently, and for the last 6 months our success rate indicates that we are second in the United States, as far as quality decisions made by their determination.

The Social Security Administration has the right to review any case it chooses, reverse our decisions verbatim, and make that effective.

Now, there has been quite a bit of criticism about the consultative examination process, pointed out by the three physicians here, that you saw earlier.

In the past 14 months, we have contacted every physician licensed to practice medicine in the State of Arkansas, and have asked them for the past 8 years to do consultative examinations for our agency.

Numerous physicians will not do so because of the low fee schedule. Numerous physicians will. We do not have physicians who examine applicants for us who are our employees. They are all in private practice and do this because they want to.

Arkansas is a State with limited medical resources, as you well know. We have one cardiologist in the State of Arkansas willing to do examinations for us in Little Rock. And I have to beg him repeatedly to stay, All of these specialists have been contacted and we have tried to work with them, to get them to provide the kind of evidence that we need. The reports that physicians provide to us, the quality of the reports that they provide, determines the type of decision that we make on cases.

There has been a question earlier about our decisions when we determine someone is not disabled and we say that they can work. Now, Congress in 1967, changed the law and applied the national

economy test, and when an applicant is found not to be disabled, you only have to look, by the law, and see that if a job exists in representative numbers in the national economy, then the decision, if they can perform that job, then the decision is that they are not disabled.

Now, in the appeals process, I agree. It's too long and too lengthy, and needs to be reformed. And I support that.

Initially, when an applicant applies, if he is denied, he has 60 days to appeal. The next step is reconsideration. He has 60 days. The next step is administrative law judge decision. He has 60 days. The next step is the appeals council, 60 days; Federal District Court; U.S. Circuit Court of Appeals; and U.S. Supreme Court, if he can get his case that far. And I think that this is a problem that should be resolved by Congress and I definitely support it.

Senator, is there anything specific?

Senator PRYOR. Well, first, Ken, let me ask you this: We had a little lady just a moment ago, Mrs. McNoel, who testified, and I thought she gave some very moving testimony.

How did your office ever determine that this little lady was capable of holding a job, and how did it decide that she should be cut off of disability in the beginning?

Mr. PATTON. Senator, as you well know—and I am not trying to pass the buck—specifically, I cannot talk about individual cases because of the Privacy and Freedom of Information Act, and are subject to the penalties,

Senator PRYOR. Well, let's talk about a hypothetical case.

Mr. PATTON. Be happy to.

Senator PRYOR. Let's take a person who is aged 48, has a sixth-grade education, weighs 88 pounds, spastic colon, colitis, chronic anemia, one arm, acute asthma, unpredictable increase of heart rate, how can this lady be taken off of disability?

Mr. PATTON. What we would look at in those cases is the objective medical evidence in each category, and as far as her asthma is concerned, we would look at what her chest X-ray showed, what the pulmonary function studies show, and these are regulations that are adopted by the Social Security Administration and I do not have the ability—although I might like to—to change those regulations.

As far as her spastic colon is concerned, we will look at her ability to eat, maintain her weight, what is her normal weight. We would look at blood studies.

Senator PRYOR. Would you look at a sixth-grade education?

Mr. PATTON. Yes, sir, certainly would.

Senator PRYOR. Would you look at jobs available in her area?

Mr. PATTON. No, sir. We would look at what you passed, as a Congressman, by the national economy test. If we can show that she can perform these jobs in the national economy, the decision is a denial of her claim. We would also consider her orthopedic impairment, the loss of one arm.

Senator PRYOR. Well, she was told that she could be a secretary.

Mr. PATTON. This is only an example. We are not bound by law or regulations to specifically cite or find occupations. It is only a representation of the kind of work that we determined that she could do.

Senator PRYOR. OK, now, Ken, I am going to ask you this question and this is, I guess, a major question that sticks out in my mind about your particular agency: In 1975, the Arkansas State agency, which you operate, had reportedly gone from an initial denial rate of 56 percent of those who applied, to an initial denial rate of 76 percent today. If I'm not mistaken, Ken, that's the highest denial rate in the United States. Why is this?

Mr. PATTON. It was for last year.

I think there are several factors that influence this. In Arkansas, as you well know, if you're under age 65, you only have limited places to go to look for resources. AFDC, food stamps, and if you're under 65, the only other two places you have to go are disability, either under title II, social security or supplemental security income. And you also noted early that Arkansas had the one of the highest number of applicants per population applying.

Even though that we have one of the highest, if not the highest last year, denial rates, we actually ended up with more people per population on disability rolls.

If you will look at the population of Arkansas and the sister State next door, Oklahoma, who has nearly 800,000 more population than we do, we actually have, in total number, more people on the disability rolls than Oklahoma.

So I am not saying that all of our decisions are correct. I can quote you statistics for the last 6 months that show that Arkansas is No. 2, as far as the Social Security Administration is concerned. And if you would like to change those rules, I would be more than happy to change the decisions that we make because my job was a lot easier prior to the time that Congress passed the 1980 disability amendments.

Senator PRYOR. Do you feel, Ken, that at this point we should deny benefits to those during the appeals process?

Mr. PATTON. No, sir. I support continuing benefits through the appeals process.

There is only a couple of things I would like to point out, working quite this closely with the Social Security Administration. Now, if an applicant receives benefits, either at the Social Security Administration's fault or their own fault, and are later determined not to be disabled, they institute collection procedures, and this would be a detriment to the applicant who had received that money and a lot of, I feel, unnecessary work on the part of the Social Security Administration.

Senator PRYOR. Ken, I also think that our office in Little Rock may be the only disability office in the country that reports directly to the Social Security Administration, while the 50 others have a State agency over them. Am I correct in that?

Mr. PATTON. I think you're very close. I believe there is one more agency. In the past history of our agency, we were a part of vocational rehabilitation. But prior to the time that I came to the agency, the performance of the agency was so bad that Social Security Administration threatened to take it away from the State and to correct these problems, they set it up as an independent agency. And, as you know, you appointed me as director in 1975.

I feel that being organized as we are, we have the ability to react quickly. If you will look at our performance for the past year with

these large numbers of cases to be reviewed by the 1980 disability amendments, we were able to staff up and handle those cases in an organized manner where some States, who could not respond so quickly, had backlogs pending tremendously.

I would like to indicate that every person, Congress, Social Security Administration, our agency are, I feel, all jointly responsible for the problems of the disability program. And I am not sure that we should point fingers at each other and say that, "You're responsible," or, "You're responsible."

I think that with your leadership, we can hopefully correct some of the problems that have developed. And if we do not do so now, I'm afraid that we never will.

Senator PRYOR. Well, I know you individually as a compassionate person and let me, if I could, for the record, get a few recommendations that you have about the process and how we can make it better, how we can make it, in my opinion, more sensitive to individual needs.

I feel like right now we're operating this whole thing almost by making these people computer numbers and I don't think we're looking closely enough at these individual cases. Now, that may be your fault, it may be my fault, it may be Baltimore's fault, it may be someone else's fault. But now, I think, is the time to try to find some solutions to this problem.

Let us have those suggested changes that you would have in mind at this point.

Mr. PATTON. I certainly agree. One of the main problems that I feel, I think, has been pointed out here earlier and for the sake of objectivity, the administration has taken the stance that we will not see these people until the administrative law judge level. I have been out of step with a lot of my contemporaries, but I feel that a face-to-face interview by the decisionmaker, taking the history, taking the claim, should be done by the disability examiner.

Senator PRYOR. And this is before the payments are cut off?

Mr. PATTON. No; this is at the initial level, when the applicant first appeals.

We participated in a project at Fayetteville, where we had this done. I think it was more humane. People understood better, our allowance rates were somewhat higher because we had the ability to converse with the applicant, talk with them about their impairments, and talk with them about their physician to get that medical report.

I definitely support that. It would require a total reorganization of thousands of employees in States but I think it's something that should be done.

I believe the Federal administrative law judges have a definite place in the program. Our decisions, when you look at what we do compared with the decisions that we overturn, if I was a private citizen, I would say there is a definite problem in the program. But what the judges do, does not reflect what we do, because they are not the people that we report to.

I feel that the reconsideration step can either be kept in or left out. I feel the next step should be the administrative law judge. After that, I support a disability court because you know as well as I do that the majority of the cases pending in Federal district

court—and one of the largest backlogs is disability cases—so that an applicant can finally get a determination quickly rather than taking years if you're trying to get to the U.S. court of appeals.

I also support that in the review process, whomever is going to review our work and the administrative law judges' work, that we have one reviewer because we have different organizations, different reviewers, and we are certainly, I think if you look at the statistics, running apparently two different programs.

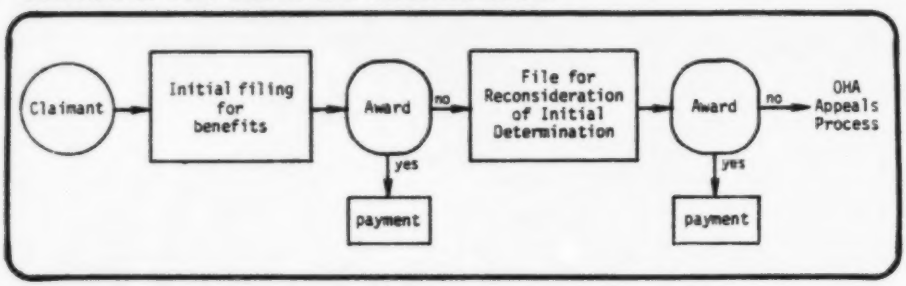
Senator PRYOR. Do you feel that the administrative law judge should be separate from the control of the Social Security Administration?

Mr. PATTON. They are part of the Social Security Administration now. If I understand this correctly, what gives them the ability to be separate is the Administrative Procedures Act.

I have no problem with that as long as we are both being reviewed somewhere by the same people, because our review process is considerably different from theirs. There is an entirely different organization. They have the Appeals Council. We have the Office of Disability Operations.

Senator PRYOR. The step that we refer to as the reconsideration step, and I am pointing to the flow chart in the front of the room, if we adopted your recommendations, Ken, would this reconsideration step be abolished, or would it be kept?

Overview of SSA Claims and Reconsideration



Mr. PATTON. I can support it either way.

Senator PRYOR. Wouldn't that add 60 days sometimes to the whole procedure?

Mr. PATTON. It does. And right now at this particular time, there are not a lot of cases in our office overturned at the reconsideration step.

Senator PRYOR. Why couldn't that be built into the initial decision hearing that you make reference to?

Mr. PATTON. This face-to-face?

Senator PRYOR. It seems like it would at least save 60 days in the whole complexity of the process.

Mr. PATTON. Yes.

I know that approximately 53 percent of the people that we are now ceasing do not appeal. We were talking earlier about the continuing disability cases, 53 percent of those people are not appealing their benefits, not appealing our initial decision.

Senator PRYOR. Why is that?

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Mr. PATTON. I don't know. You get different opinions from talking to different people.

Some people will indicate that they have more or less given up, that the Federal Government has told them that they are no longer eligible and they quit. If you talk to other private citizens, they feel that a large majority of these people were working and they were caught. And I'm sure the truth is somewhere in between.

Senator PRYOR. Are you coming out this morning for a position that there should be a mandated hearing before termination of benefits?

Mr. PATTON. No; I am asking for a face-to-face determination process initially. Do away with the reconsideration process if you choose. I don't think that we should mandate an appeals process. Because you know as well as I do, they are rather costly and the appeals process can be explained at the face-to-face with the applicant if they wish to appeal at the local social security office.

Senator PRYOR. We've heard three physicians this morning. How much attention, either in your office or in the Social Security Administration in Baltimore, is given to a physician's statement?

Mr. PATTON. A physician's statement, by regulation, unsupported by the facts that a person is disabled, totally and permanently disabled or partially disabled, has no weight unless it is supported by the objective facts to support that conclusion as is required by the regulations.

When we talk about heart disease, I'd like to point out that the Secretary, by law, has the ability to accept or reject any court decision that he chooses. And prior to 1975, they had adopted an Eighth Circuit Court of Appeals case from Washington, that indicated prior to the time that you could cease an applicant's benefits, you had to show medical improvement.

The Secretary at that time chose to disregard that case and change, more or less, his procedures and now we have to apply the regulations like the applicant was an initial application today. And in the meantime, the Administration has changed the medical criteria at least twice, and is in the process of doing it now, so that the medical criteria is much more stringent than it was when an applicant was allowed. And an applicant with heart disease may have actually met that listing 5, 6, or 10 years ago, and today does not meet that listing which mandates that we deny their claim.

This has been a large part of the problem that I have seen with the continuing disability and investigations.

As I indicated, we contact physicians, specialists across the State, to try to get them to do examinations for us. Sometimes we are successful, sometimes we are not. We are in desperate need of cardiologists, orthopedists, neurologists, and all of the other specialists.

Senator PRYOR. I also think, and I don't know that you can solve this problem nor that I can, but many, many of the claimants, and the people involved in the process, have to drive an awful long way for these examinations.

Mr. PATTON. Yes, they do, and we spent almost $4 million this year trying to obtain evidence to help applicants support their claims to the Social Security Administration. I wish that none of them had to drive. We'll try to get examinations arranged as close

to the applicant's home as possible and still get an adequate examination.

Senator PRYOR. Mr. Pritchard, with Ozark Legal Services, a moment ago suggested that benefits be given through the appeals process and that if benefits are reinstated, that SSA pay the attorney fees.

What would your response be to that?

Mr. PATTON. In some cases, attorneys, by the very nature of the benefit, if we cease the benefit and they get it 7 months later, 25 percent of that pay is not much money. And they can spend a lot of time.

There was a bill introduced in Congress in the past session that would have done away with even that amount of money. It was defeated.

A flat rate if it was reasonable, if you would look at it on an actuary basis—and I'm not an actuary and I don't know how much it would cost—but if the cost were not exhorbitant, that would be fine, or provide more funding to legal services and mandate that they handle these cases and earmark a specific amount for their incorporations to do so.

Senator PRYOR. Ken, you supervise at the stage of initial review for the State. How do you determine which cases should be reviewed? Are all disability cases going to eventually be reviewed?

Mr. PATTON. The 1980 disability amendment that you voted for indicated that all cases would be reviewed in the next 3-year period. Due to 77,000 in Arkansas, as an example, being reviewed in 3 years, this is a tremendous workload. The administration adopted that people with permanent impairments, and they are still revising that criteria, would be reviewed at least once, at least the case would be picked up and looked at at least every 7 years.

At this time, the cases come to us through the mails in boxes from the Social Security Administration. They are now going to the social security office for a face-to-face interview prior to the time that their decisions come to our office for review, and they have criteria that they can screen the cases out, if they determine that they meet this criteria, that they are permanent, or they are in a nursing home, or so forth.

Senator PRYOR. Well, let me straighten out one thing for the record: It is true that I do support a review process and I did support legislation in Congress for a review process. I don't want people drawing disability who might not be entitled to draw disability.

Certainly I can speak for myself, and I think for the entire Congress, when I say I did not even begin to vote for legislation which would set up an arbitrary, unfair system to be basically interpreted and run by the Social Security Administration which I think has a great deal of insensitivity to individual human needs. I think that insensitivity, once again, is exemplified by the fact that today, here we are with several hundred people in Fort Smith, Ark., one of the highest rates of cutoffs in the whole Nation, trying to explain this whole procedure to the people. The people who run the program, the Social Security Administration, didn't even bother to send a witness, and went out of their way to say that they would not send a witness.

I think that, to me, this indicates that something is wrong, very wrong with the degree of human concern that the Social Security Administration has adopted in this whole area. I just wanted to make that point.

Suppose that you receive word that someone who is on disability is working. Let's say even at a part-time job or that he or she may not be reporting that work, what action is taken by your office on these reports?

Mr. PATTON. Work activity is the responsibility of the Social Security Administration, themselves, and what we normally do is if I can, hopefully, identify the applicant, know where they live, I will make that evidence available to the Social Security Administration and, say, in Fort Smith, Ark., they will call the applicant in for an investigation and determine if the applicant is working above the substantial gainful activity level,

If that is determined that he is, he is so notified and his benefits ceased, with appeal rights given. If there is an indication that he is working for in-kind pay and all of it is not being reported, cash-in-hand, that can institute a medical redetermination of his claim.

Senator PRYOR. Ken, let me ask this question that relates to another area of your recommendation on the interviews: With regard to these interviews which began only last month, who conducts the interviews with the person? Are they conducted by decision-makers? How are they trained to conduct these interviews, and what background might some of these interviewers have?

Mr. PATTON. These interviewers or claims representatives in the social security district offices, and I had the opportunity to sit in on two recently, one in Helena and one in Forest City this week, and they are the same people who take the initial applications for disability, retirement, widows, survivors, and so forth. They are trained interviewers on the part of the Social Security Administration.

We recently had the new head of the Office of Disability Operations, Pat Owens, who was in our office about 3 weeks ago. We looked at a sample of the cases that were coming in from the district offices and we found them to be adequate. They asked the applicant, "Have you worked, are you still disabled, and where are you receiving medical treatment?" And the problem that we are seeing is that in a large majority of the cases, applicants have not been receiving regular treatment. Numerous people have not seen a physician in the past year.

Senator PRYOR. Well, we have the highest denial rate in the Nation at this time, it appears, Ken. Does Arkansas or does any State have a quota?

Mr. PATTON. No, sir; we do not have a quota.

Senator PRYOR. Do you have a goal?

Mr. PATTON. We have goals and criteria that we have to meet or we receive Federal intervention. Goals as far as processing time, quality of the cases. And the Social Security Administration picks about 13 percent of allows and denies, and looks at that and gives you a report card. And if that report card indicates that you are doing the job in a manner that they don't like, they will send in Federal employees to show you how to do these determinations or work them for you.

As I reported earlier, our report card indicates that, traditionally, our quality is as our boss says it should be. Now, if that's wrong, I support that you change the criteria that the Social Security Administration has adopted.

Senator PRYOR. Ken, I have to be honest. I think that your office is magna cum laude. I think it's making an A-plus right now with regard to the number of denials and I'm afraid, frankly, that I just cannot explain this very high degree of denials at the Arkansas office, the highest in the Nation.

Mr. PATTON. I have been called on that in the past to explain the high number, and also been asked why we have so many people on the rolls. And I will relate again, there are several factors in Arkansas that has large numbers of people applying, that does not apply in other States because there is no general welfare fund to help in Arkansas. And it's the only place, if you're under 65, that you can look for cash payments.

Senator PRYOR. Ken, one final question: How many doctors work in the State agency, how many are in resident training at this time at the medical schools, just as a matter for the record?

Mr. PATTON. We have six physicians in our office who are licensed to practice. Basically, we have five who work full time and one part time. We have asked several months ago for more money to hire additional staff.

I don't know the number of residents in medical school, and by State law we are bound from, prohibited from, using physicians in the medical school because of payment problems.

Senator PRYOR. Ken, we're beginning now to get into a little time-bind here. I want to thank you for your statement, and I do appreciate the recommendations that you have given. We're going to take these recommendations back to Washington to see if we cannot improve this whole system better and certainly make it more sensitive and more humane. I would like to ask if you and Mr. Luce would step aside now and let us call the three administrative law judges to our stand.

Ladies and gentlemen, we now come to a part in our hearing which is very critical. Before I introduce our next panel of guests this morning, let me first identify the people who are with us today from my staff. If you have any particular concerns and can't catch me, you might visit with them.

First we have Theresa Forster. Theresa is not from Arkansas. She works on our Washington staff, and if you have a concern about elderly problems on the Washington level, she is probably the one that would be dealing, in many instances, with your particular case. I hired Theresa 2 years ago from the staff of the Senate Special Committee on Aging. She is doing a wonderful job and this is about her fourth trip to Arkansas. So we're going to end up making a full-fledged Arkansas citizen out of Theresa one of these days.

On the Little Rock staff level, we have Marilyn Byrd. Marilyn handles our social security and veterans disability cases in my Little Rock office. Many of you may already have cases dealing with Marilyn's shop there in our Little Rock office. Marilyn is originally from El Dorado.

Then we have Sheb Adkisson, who is from Little Rock. Her father is a very fine friend of mine. He is chief justice of the Arkansas Supreme Court, Justice Adkisson. Sheb came on as an intern and did such a good job, I asked her to stay on. We have really been proud to have her on our staff.

Next is a Fort Smith product, Annie Powell. Annie is in our Little Rock office and if you call our Little Rock office, she will probably be the one answering the telephone. It always helps to put a face with a voice and that's why I wanted you to meet Annie. She is from Fort Smith so she wanted to come back to her hometown today for this hearing. We appreciate Annie's fine work.

Annie, by the way, is going to go to law school, and someday if you all need a good lawyer, about 3 years from now, you can call on her.

Ed Jayne is on the committee staff of the Governmental Affairs Committee in Washington. This is his first trip to the State of Arkansas. Ed Jayne is probably one of the authorities in Washington on social security and matters like this. He has been very instrumental in setting up this hearing and doing all that was necessary in preparation for it.

I did want you to be acquainted personally with each of these individuals who are here to serve you and to listen to your concerns.

The final group of witnesses today represent another perspective, I think, in our efforts to explore this problem.

I'd like to welcome to this committee hearing the three administrative law judges from the Office of Hearings and Appeals here in Fort Smith.

They are Judge Jerry Thomasson, Judge David Hubbard, and Judge Francis Mayhue. The Office of Hearings and Appeals is a Federal office under the direction of the Social Security Administration. I raised the issue a while ago, should this office or should the ALJ's be separate and apart from the Social Security Administration. They may want to discuss this issue with us this morning.

What is the role, what is the function of the administrative law judge? That function is to conduct what lawyers call de novo reviews of claims for disability and continued disability concerns when the claims are initially denied and the claimant decides to appeal the ruling.

I must say that I am very grateful to these three gentlemen for agreeing to take their own annual leave in order to appear here today. Unfortunately, the Office of Hearings and Appeals has decided not to grant them official leave to testify this morning. So they are taking leave, in other words, out of their own pocket this morning to come and testify at this hearing.

Some things are hard to believe and I wanted to pass that on to you.

Before you begin your testimony, let me also say that a couple weeks ago I invited Congressman Hammerschmidt to attend with us and to participate. He is on the House Select Committee on Aging. Congressman Hammerschmidt called me about 2 or 3 days ago and he said that it would be impossible for him to come, and he would look forward to reading the transcript of our hearing in Fort Smith this morning.

Next, let me turn the microphone over to our ALJ's, to our administrative law judges, and I'd like to say first, if there is any comment you would like to give on some of these discussions that we've had thus far, we would be glad to have those comments and then I would have some questions for you.

Judge Mayhue, we will start with you and ask you to make any comments you desire to make.

PANEL NO. 3. ADMINISTRATIVE LAW JUDGES

STATEMENTS OF HON. FRANCIS MAYHUE, HON. DAVID T. HUBBARD, AND HON. JERRY THOMASSON,[1] OF THE OFFICE OF HEARINGS AND APPEALS, SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES, FORT SMITH, ARK.

Judge MAYHUE. All right, thank you, Senator, for your very kind remarks. We appreciate your efforts in holding this public hearing.

I would like to just generally say that our biggest problem in this office, as well as throughout the United States, is that we don't have the independence that we were intended to have when Congress enacted the Administrative Procedure Act in 1946.

As a result of the review of all the people that are on social security disability now, the present administration has issued veiled threats, direct threats to us, the three of us, and said there is something wrong with our office because we're too liberal, we put too many people back on the rolls when they are taken off. But you've seen what we have to look at every day.

If you have specific questions of me, I would like to take them at this time or let the other judges make a statement.

Senator PRYOR. Why don't we allow the other judges to make a statement and then we will refer individual questions.

Judge Hubbard.

Judge HUBBARD. First of all, Senator Pryor, I do thank you for coming.

I make only one comment and then I'll be willing to answer questions.

I find it to be degrading that the Office of Hearings and Appeals requires me to take my own vacation time to come and testify at your hearing. I can assure you that if the hearing was being held in Washington, and had you asked some of the bureaucrats to come to testify, they wouldn't be required to take annual leave to attend a congressional hearing. I'm here because I care about these people who have undergone great degrees of injustice from the Social Security Administration.

All we want is a little protection from harassment and intimidation of the bureaucracy, and we've had it for about the past year and it's up above our heads now. That's the reason you're here because I think you're concerned about the pressures put on our office by this administration.

Senator PRYOR. Thank you, Judge Hubbard.

Judge Thomasson.

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[1] See appendix, item 3, page 65.

Judge THOMASSON. Senator, I appreciate you being here on behalf of the people of Arkansas today. I appreciate your giving us an opportunity to state what's on our minds and what's on my mind would take about 8 to 10 minutes.

Would you rather I do it at this time or wait for questions?

Senator PRYOR. Jerry and I served together for about a thousand years in the Arkansas State Legislature, so it's hard for me to call him "judge," but judge, you go right ahead. Just go ahead and talk.

Judge THOMASSON. All right, my friend, Ken Patton's testimony here today—I like Ken and he's a nice guy—but the Arkansas State agency denies more people benefits than any other State agency in the United States. And Ken would tell you that we have more people applying for benefits in Arkansas than we do, perhaps, in Oklahoma, and I would suggest to you that's immaterial. What we're talking about is a percentage of people and, by his own admission, 20 percent of the people he denies are not able to work. He denies about 76 percent initially, which is a much higher percentage than in most States. In fact, next to Puerto Rico, it's the highest denial rate in the United States.

Now, how that affects us is that when people appeal his denials, they come to us for a hearing. Then we reverse the Arkansas State agency in a great number of cases, and this is irritating the Social Security Administration, and they have imposed sanctions or leaned on us, as you will, illegally and in immoral and unethical fashion.

In 1980, a team from Washington came down and told us we were the best office in the United States. We got our cases out quicker than any office in the United States, we got our cases out twice as fast as the national average. Our clerical employees each got a $200 bonus as a result of it.

In 1981, we began to find out the administration didn't like the percentage of people we were finding disabled. So they started having investigations of our office. We have had multiple investigations of the office and these are time-consuming, disruptive procedures where everyone in the office is talked to. Our office underwent investigation about four or five times in 1981. In July 1981, we were told all of our cases were going to be reviewed because we were finding too many people disabled.

In December 1981, I met a man from Washington who appeared at our office without prior notice that he was coming. He was a special assistant to Louis Hays, Associate Commissioner of the Office of Hearings and Appeals, Social Security Administration. He told me, after his investigation, that until we satisfied Martha McSteen, Regional Commissioner of Social Security for the Dallas region, on our reversal rate, there would be no peace in our office. And by that, he meant we were paying more people than Martha McSteen felt we ought to pay. Martha McSteen is not a lawyer, and is not an administrative law judge, but a career bureaucrat.

We are supposed to be protected by the Administrative Procedure Act—title V, United States Code—and also the written policy of the Social Security Administration prohibits them from trying to intimidate or harass an administrative law judge in the decision-making process.

In January 1982, for the first time, as far as I know, in the history of the Social Security Administration, Judge Francis Mayhue and I were invited to Washington for training. After 12 years and 4,000 decisions, it was determined we needed training.

They told us that we were not to follow the case-law precedent established by the Eighth Circuit Court of Appeals. Instead, we were to follow the Social Security Administration and our troubles wouldn't cease until we got our reversal rate down to approximately 55 percent. The man who told me that was Bill Lavere, Office of Appeals Operations in Arlington, Va.

Judge Mayhue and I had each voluntarily taken 50 case dockets in Detroit in September and October 1981. We used to keep our work caught up in the Fort Smith office and we would go all over the United States to hold hearings to help with the national case backlog.

We got back, wrote the decisions, and then a remand came back, directing me to go back to Southfield, Mich., and hold a hearing. And as far as I know, that's the first time this has ever happened in the history of the Office of Hearings and Appeals.

Ordinarily, the next visiting judge or one of the judges in Detroit would hold that hearing. It was explained to me that this was punishment because of our high reversal rate.

Several other cases eventually were remanded back and Judge Mayhue and I followed the order of Louis Hays and returned to Detroit in May 1982, and I held about five hearings that morning and Judge Mayhue held three hearings. Either one of us could have held the hearings that day and held hearings for the other judge. It wasn't necessary for both of us to be there the same day and to cost the taxpayers for two persons. This was punishment for paying a higher percentage of people than the Social Security Administration felt should be paid. This delayed decisions for nearly a year for the Michigan folks.

Then a week after I got back from Detroit, I was at Fayetteville, Ark., holding a hearing at 3 o'clock Friday afternoon, and I got a call from Chief Judge Phillip Brown, through the regional chief judge, telling me they wanted me in Washington the following Tuesday morning for training. They gave me a room number in a building south of Washington, near Fort Belvoir.

So I said, "Are any of the other judges going from the office?" And they said, "No. The idea is that you can teach the other judges how to write decisions."

And I might say, Senator, at this point, I used to write decisions for the Arkansas Supreme Court. I studied decisionwriting under Judge George Rose Smith.

So anyway, I went up there, and I went to the room at the appointed time, and it was a class of new administrative law judges. So I sat at the back of that room for 3 days, a very humiliating experience, since we didn't feel we had done anything criminally wrong, or anything to be punished for, and we'd always worked hard and got the cases out. One of my claimants killed himself while I was there. He would have received his favorable decision prior to that but for the aforementioned harassment.

So, then, the last incident, about the middle of last month, a regional official in our organization told me, and I quote, "The Con-

gressmen may be happy with your reversal rate but no one else is. There are people in Social Security that would like to fire you as administrative law judge in charge and close the Fort Smith hearing office."

So that's the end of that. I apologize for being negative. I wouldn't do it at all except out of a deep sense of duty.

I think the problem is, as far as the whole situation, the doctors who work for Social Security in Washington draw up criteria for disability that nobody meets. They draw up the criteria and then the State agency will contact the treating doctor and ask for reports concerning your disability. The treating doctor may say, "Well, he's got a class 4-D heart, according to the American Medical Association, he's totally disabled, I told him not to work."

The claim goes to the State agency and they say the claimant doesn't meet the criteria because his angina is not typical.

In other words, the same situation arose—and I am about through—the same situation arose with black lung benefits in 1969. They first said, "Let's determine who has black lung by chest X-ray." So they X-ray everybody and paid many and didn't pay many, and then Congress determined that the program had failed.

So they went back in 1972, passed the 1972 amendments to black lung, the Coal Mine Health and Safety Act, and said, "Let's determine who has black lung now by pulmonary function studies." OK, you can't tell who has black lung by pulmonary function study alone, either.

These were medical criteria drawn up by those doctors in Washington. And, finally, to show that the whole thing failed, they finally said, "All right, we will create a 15-year presumption. If you worked in the coal mine 15 years, we will presume you have it and are disabled." That shows we have failed.

There is nothing wrong with the definition of disability that Congress passed years ago and we operated under this definition for years, "Inability to engage in substantial gainful activity by reason of medically determined impairment, et cetera."

The problem is the criteria that the doctors draw up in Washington and no one out here who is treating these people, the physicians, don't respond to that criteria when they send in their reports. The result is a high denial rate.

So I think we ought to go back to the old definition of disability. And then I think that everyone involved in the decisionmaking process should be protected. And I think we should be taken away from the Social Security Administration. They've been making studies and other things for years, ever since I've been involved with it, showing that we're not getting the job done, and the last 2 years have been like a nightmare to me.

Senator PRYOR. How has it been like a nightmare?

Judge THOMASSON. Well, I'm in charge of the office and when somebody comes down there to investigate it and talk to everybody down there, well, that bothers me, you know? It creates confusion and takes up time. And then the idea that you're doing wrong, the threat that Louis Hays—see, I've already been to Washington twice and Louis Hays has put out a memo that if this doesn't work, "We're going to do something else."

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And before I close, one more point: In his statement that was submitted today, Associate Commissioner Simmons, on page 17 of his statement, he stated that he's digressing to discuss the Fort Smith hearing office problem, "This review, which was conducted by the Appeals Council, using its own-motion authority, was initiated because of serious problems with the quality of decisions by the three ALJ's assigned to Fort Smith."[1]

On June 18, 1982, Commissioner Hays wrote to Senator Bumpers and said that the reason that we were being reviewed was because we had reversed the State agency too many times.[2]

Now, this is the No. 2 man in Social Security telling you our problem is one of quality and the No. 1 man at the Office of Hearings and Appeals is telling Senator Bumpers that our problem is that we pay too many people.

That's all.

Senator PRYOR. Judge, thank you so much. Thank all of you. We appreciate all of you coming, especially on your own leave time.

Judge Mayhue, let me, if I could, ask a question.

I think just for about 1 minute, if you could, try to explain to this audience, how an administrative law judge becomes an administrative law judge.

Judge MAYHUE. You must have been admitted to the practice of law for at least 7 years. Out of that 7 years, you have to have 4 years of qualifying experience. In other words, trial work, hearings before administrative agencies. You can't just be sitting in your office examining abstracts.

Second, you apply to the Office of Personnel Management in Washington, fill out this big, long application, They conduct an investigation into your background, and talk to lawyers that have tried cases before you. Then you take an 8-hour written examination, and if you pass that, you take a 1-hour oral examination before a panel.

It takes about 1 year from the time you start until you know whether or not you've made it. When I applied in 1971, there were 480 applicants; 65 of us made it.

Senator PRYOR. Thank you. I think that's beneficial. I must admit, I had to ask that question yesterday because I wasn't exactly certain how an administrative law judge became an ALJ.

Let me also ask Judge Mayhue this question: We have today, existing, a very unique condition in the Fort Smith office, and that is—and I understand this to be correct; you can say I'm wrong if I am—we are under a system of 100 percent review by the Appeals Council.

Tell us what that means exactly and how is this impacting on your work?

Judge MAYHUE. Well, with the 100-percent review and the cases they send back, plus the people that Mr. Patton turns down, it's tripled our caseload, and it's denying these people the right to their benefits, because we can't get the cases out like we used to.

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[1] See appendix, item 1, page 57.
[2] See appendix, item 2, page 64.

In addition to that, the 100-percent review has been used by the Appeals Council to intimidate us, punish us, and if anybody's rights have been violated, ours have.

Senator PRYOR. Judge Mayhue, is there any other area in the country that is under 100 percent review at this time?

Judge MAYHUE. Not to my knowledge.

Senator PRYOR. Only Fort Smith, Ark.?

Judge MAYHUE. Yes, sir.

Senator PRYOR. I always said Fort Smith was unique.

Judge MAYHUE. Well, I don't happen to be from Fort Smith, or from Arkansas, but I love these people, and we're trying to take care of them.

Senator PRYOR. Judge Mayhue, have you ever received—we've just heard a very strong statement by Judge Thomasson—a threat or statement of reprisal regarding any of your decisions?

Judge MAYHUE. When they called me to Washington with Judge Thomasson in January, they said: You guys are getting out too many cases. Slow it down. We're having a hard time keeping up with you. We've got eight people in this little room looking at all your decisions.

Well, that wasn't our problem. I had cited the law of the Western District of Arkansas as espoused by the court and by the Eighth Circuit Court of Appeals and they said, "You can't do that." Just like Mr. Patton said, he's not bound by court decisions.

Well, I learned in law school that if I lived in the jurisdiction of a court, I'm bound by that court's decision. And they said, "You quit citing these case decisions in your opinions because the Secretary is not going to follow them." I said, "OK, I'm going to go back and tell those judges that you told me to flag my nose at them, and they will put me in jail, or they will put you in jail." And I've shifted it right back to them. It's in their lap. I'm going to follow the law.

Senator PRYOR. I'd like to ask this question of Judge Hubbard, if I might: Judge Hubbard, in your opinion, why is there today such a large discrepancy between the denial of benefits by the Arkansas Disability Determination Agency in Little Rock; and the granting of benefits at the hearing level? Why does that large discrepancy exist here?

Judge HUBBARD. I think there are several reasons. First of all, it is my opinion that the medical evidence, the development of medical evidence is poorly done by the DDS in Little Rock. They do not allow treating physicians to make comments regarding what's known as residual functional capacity. That is, to evaluate what their own patient can do, or what they will allow their patient to do. That is reserved for the doctors in Little Rock who never see the claimant.

Second, we see evidence at the hearings that has never been considered. In other words, the claimant comes to a hearing, he has additional evidence. He is often many times represented at the hearing and additional evidence is presented.

The third reason is that we are the first decisionmakers to see the claimant, and you've seen prime examples of that today by these people who have been up here. We see them, we talk to them to get their complaints of pain.

I might also add that Mr. Patton's regulations that he follows give no consideration to the issue of pain. The district courts and the U.S. Court of Appeals are very specific about that point. So at least in that particular area, the court decisions and the regulations are diametrically opposed. And I give consideration to pain. I write a lot of cases on the issue of disabling pain.

I think as you pointed out earlier, in the cessation cases, it's my opinion that no consideration is being given to the medical evidence under which a person was originally granted.

Now, in my decisions I start at the very first and write—I don't care how long, if it goes back to 1965, I discuss that evidence if I think it's significant, as it appears to the claimant that is appearing before me at a hearing.

Also, I think, Senator, that with many things such as arthritis, emphysema, heart disease, all the ailments that people suffer from, as time goes on those ailments get worse. If you have emphysema, you're not going to get any better. If you have arthritis, you're not going to get any better. If you have heart disease, if you had one heart attack or two heart attacks, you've got cardiac insufficiency, and you're not going to get any better.

The worsening of the condition over the years is something that I think has a great deal of weight.

Senator PRYOR. Judge Hubbard, please let me ask this question if I might: What specific recommendations do you have for me as a member of the legislative branch of government? What recommendations or suggestions do you have for not only possible changes in regulations but also legislation?

Judge HUBBARD. The first thing is, Senator, it's already been mentioned that benefits should continue through the administrative law judge level. I would add onto that, after the experience that the three of us have been through, that the benefits on a cessation case ought to continue through the final decision of the Secretary because of the appeals council action as it relates to our cases. That may be just in our situation, but I think benefits ought to continue through the final decision of the Secretary.

Second, if you allow, as Mr. Patton suggested, a face-to-face interview at some lower level of adjudication, you must provide protection to those people making the decisions, such as we're supposed to be covered by. If you don't that type of an interview is worthless because they will set some quota on allowances. They won't say it's a quota. But they will set some standards that will taint that interview.

I noticed Mr. Patton mentioned they did this in Fayetteville at one time. They are not doing that anymore. I think I know why: Because the person that did the face-to-face reconsiderations up there was granting too many cases. At least that's what I was told.

On the cessation cases, I think there ought to be a specific finding of medical improvement. And I want you to take specific note that the Social Security Administration has in a case in the ninth circuit, that the Ninth Circuit Court of Appeals said that you had to show medical improvement and they said, "We're not going to follow that decision."

One more thing I'd like to add is that I think you should be aware that something significant is happening right now in the

Social Security Administration. The Social Security Administration is issuing a group of standards called social security rulings and they are, in effect, going to try to put on the administrative law judges the same very restrictive standards—Programs Operations Manual—that are used at the State agency level without publication, as by law, and I have a document [1] that was published by the House Committee on Ways and Means containing a quote by the Commissioner.

He said, "I have already directed that we issue social security rulings that are binding on all levels of adjudication and to incorporate the adjudication standards of the POMS—" which is the Programs Operations Manual System. This is the set of standards followed by the State agency under Mr. Patton.

Now, if they do that, then we are immediately faced with, again, determining where that doesn't comply with the law and regulations along with the court decisions. It makes our job that much harder. So they're doing that without publication. I assume they will say that the rulings are a statement of policy, but I expect they will narrow the range of cases where pain will be considered, and I expect them to list types of impairments which they will, by policy, say are not severe. If a case is not severe, then benefits can never be granted.

And, finally, Senator, I would say that in order to give true protection to the claimant, because that's what we're for—I'm not seeking any protection for myself—but for the claimant who appears before me, it is my opinion that all administrative law judges within the Federal system, whether they be Social Security or any other regulatory agency, should be put in a separate agency, separate away from all of the pressures that the regulatory agencies and that Social Security put on the judges, because we have learned in a very real sense that the agencies don't like the judges.

Senator PRYOR. Thank you very much, Judge Hubbard.

Now, Judge Mayhue, did you have another statement?

Judge MAYHUE. Well, Mr. Patton's statement that he's adjudicating cases under rules now that are different than when the claimant was initially found disabled.

Somebody, I find, should be knowledgeable enough to know that ex post facto laws aren't legal under our Constitution, and that's what they're doing. They're saying, "Yes, you were disabled back then but we've changed the rules now and you can go back to work." That's what they're saying.

Judge THOMASSON. On Judge Mayhue's point, I've got a case now where the claimant retired on disability from Armco Steel in Houston. A provison of the Armco disability plan said that Armco would pay her disability if social security found her disabled. Social security found her disabled 10 years ago. Now they say she's not disabled. If I find her not disabled, then Armco Steel is going to cease the benefit that they have been paying her. And it's just like Judge

[1] U.S. Congress. House. Committee on Ways and Means. Subcommittee on Social Security. Social Security Continuing Disability Investigation Program: Background and Legislative Issue Paper. Committee Print, 97th Cong., 2d. sess. Washington, U.S. Government Print. Off., 1982, p. 19.

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Mayhue said, it's not a criminal ex post facto law but it is ex post facto.

Judge MAYHUE. Senator, for the record, I would like to submit one document. I received this from our chief administrative law judge July 15, 1980, commending me on my outstanding efforts and Judge Thomasson also got one.

Struck out "Judge Mayhue," "Dear Francis," you know, all that stuff; 1 year later, I was at the bottom of the ladder and I didn't do anything different during that 1 year, I can guarantee you.

Would you put this in the record, please?

Senator PRYOR. I will be glad to include it in the record.

[Letter from the chief administrative law judge to Judge Mayhue follows:]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
SOCIAL SECURITY ADMINISTRATION,
OFFICE OF HEARINGS AND APPEALS,
Washington, D.C., July 15, 1980.

FRANCIS E. MAYHUE,
Administrative Law Judge,
Office of Hearings and Appeals, SSA,
Fort Smith, Ark.

DEAR JUDGE MAYHUE: Too often we take for granted the outstanding effort expended by our judges. I would like you personally to know that I have noted with pleasure your individual effort toward the reduction of the pending caseload.

I am also confident that you have not sacrificed the quality of your decisions in order to do so.

I would like to thank you for demonstrating what extra effort can do to achieve our goal of better service to the public.

Sincerely,

PHILIP T. BROWN,
Chief Administrative Law Judge.

Senator PRYOR. Now, before the three ALJ's leave us, I would like for them to be available to answer any questions the audience may raise. There may also be some for Ken Patton. I'm going to try for about 10 very quick minutes here to maybe hear from a few of you folks out there about any question you have.

Now, if you've got a long, involved case, I would really implore you not to try to go into a lot of explanation because that way we could probably only cover one situation.

But, for example, I met in the hall a few moments ago, Jack Smedly. Jack is from down south and he's driven a long way to come up this morning.

Mr. SMEDLY. What I want to know is, if social security sends you to a doctor, is the doctor supposed to examine you?

Judge HUBBARD. Yes.

Senator PRYOR. Jack told me that he was asked to submit himself for an examination and the doctor did not examine him; is that correct?

Mr. SMEDLY. That's correct. I was sent to two doctors in Hot Springs. And the first doctor, all he did was take me back there, do an X-ray and a blood test and then told me, "You can go."

The second doctor I went to, just set and talked to me just like a conversation. He never checked me for anything.

Senator PRYOR. Thank you, Jack.

Ma'am, if you'd come forward and state your name, please.

Mrs. MILLER. Phyllis Miller from Greenwood.

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My husband was operated on for cancer in July. At this stage of the social security game, are we going to have trouble if it becomes necessary for us to collect? Is it going to be hard for us now to start getting it?

Judge MAYHUE. Just keep appealing, ma'am, and you will get to us sooner or later.

Senator PRYOR. Is there another comment?

Yes, sir. This gentleman drove all the way over from Des Ark, Ark. That's a long way off.

Mr. MULLET. John Mullet's my name and I have a question for the judge, any one of the judges.

When I went before the judge, I offered as evidence, seeing my doctor, taking medication, and the judge told me that he had 31 pieces of evidence that he had to consider and he didn't think that this information was necessary.

Would you have accepted it? Mr. Patton said no, that it didn't have anything to do with it, not seeing my doctors, not taking my medicine.

Senator PRYOR. Mr. Patton may want to respond to some of this. Ken, did you want to respond to this?

Mr. PATTON. Well, he specifically asked me about bills that had been submitted to medicaid and medicare and I had indicated that that was not specifically an issue, but what I needed was medical evidence.

Senator PRYOR. OK, let's have this gentleman right here.

Mr. GAGE. Travis Gage of Ozark.

What I want to know, when I went to Hot Springs to be examined, they didn't examine me. They just asked me a bunch of questions, like who was the first President of the United States, who was the third one, what I did to occupy my time, questions like that, if I ever went to school, and just, you know, a bunch of stuff that didn't pertain to disability or anything about it.

Senator PRYOR. And you were given no examination?

Mr. GAGE. No, they didn't examine me. The only examination I got, they had me cross my legs and hit my knee to see if I had any reflex. And that was the extent of it.

Senator PRYOR. What was the conclusion of the doctor?

Mr. GAGE. Well, see, that's what I wanted to tell you. They made three copies, one for Social Security, one for the office down there. Well, I was supposed to get the last copy but they turned the carbon bottom side up and it went on the back of the second copy, she said, "I'll mail you one." See, that's where I made my mistake. I ought to had stayed right there and had her make me a copy then.

So I ain't even got any proof I been down there.

Senator PRYOR. When was that examination given? Were you cut off of disability?

Mr. GAGE. Yes.

Senator PRYOR. Are you off of disability today?

Mr. GAGE. Yes.

Senator PRYOR. Have you appealed?

Mr. GAGE. Well, they sent me a letter. We appealed just a few days ago.

Senator PRYOR. Well, I don't know anything about your case, but I think it is good that you have appealed and I'm glad your reflexes are all right.

I know who the first President was, but I'm trying to think who the third President was.

Next, Robert Triplett.

Mr. TRIPLETT. Yes, sir.

My concern today is that in October 1980, here in Arkansas, I had a back injury and the doctor performed surgery, and I went before an administrative law judge and he put me on social security disability. Since then, I have been cut off. I have high blood pressure, angina, stiffness in the leg, and they said my case would be reviewed. I am trying to get a reconsideration from Little Rock. I talked to the lady in Little Rock the other day and she said that it would be quite awhile before she could get back to see me, the administrative law judge. Because I requested that I get to see him so that I would be able to testify and provide some more evidence.

At this point, Senator, can you tell me any other solutions?

Senator PRYOR. Is there any other solution?

Judge MAYHUE. Just keep appealing.

Mr. TRIPLETT. In the meantime, they're fixing to cut off my lights and everything else, while these appeals are going on.

Senator PRYOR. Well, like I said, the Congress will go back in session November 29, and there is legislation pending which I hope will help to correct this immediate situation with people like yourself in that condition.

Mr. TRIPLETT. Are there any emergency handpacking the medical evidence to the administrative law judge?

Senator PRYOR. Emergency what?

Mr. TRIPLETT. Getting the records to the administrative law judge, bypassing that bunch from Little Rock?

Senator PRYOR. Well, I don't know of any right now. Let's try to work this thing out in a legitimate, reasonable way.

Yes, ma'am.

Mrs. EWING. My name is Cheryl Ewing. My brother is what I would consider permanently disabled. He is schizophrenic and has been for at least 15 years.

Now, I won. I didn't end up in the appeals process. I went down and I got the book that told what a mental disability is. He met all of the criteria. He met them with his doctor, he met them with the other doctor that they sent him to. I won. But they told me that their doctor said he wasn't. I knew from my doctor that he would say that he was.

He said, "I'm glad they are sending him to him. He will realize how sick he is."

But my point is I spent $2,000 last year trying to help him, going to psychiatrists. I am still paying some of those bills even though medicare picked up.

Now, I have to come up this year and pay off what I owe from last year to keep him eligible to see that doctor, so that he gets good medical care. He is still very sick. He is still at home. Half the time he will not go to the doctors other than Arkansas. He lives in Illinois.

Now, I received a letter that he will be reviewed from time to time. If a medical patient who is schizophrenic, not bipolar, not unipolar, not schizophrenoform, but schizophrenic. And the National Mental Health rules show their recovery is, you know, the same basis, you know, it's a progressive illness.

I was told the condition could not necessarily have to improve. In fact, it could be worse. Yet, he still could be cut off due to the changes.

Now, that means I've got to worry every year. And I would like you to address that in the Congress, and the fact that the man next to me said they asked why 53 percent of the people didn't appeal. A man next to me got up and left, a cripple, just now when Mr. Patton made the statement.

It was because he said he had no money. And that is my problem. This year I will have no money for psychiatrists. Come next year or whenever they are going to make me appeal, I won't be able to bring Dr. Cusick forward. I can't pay him. That's a very real problem.

Senator PRYOR. I appreciate your comments so much.

Mrs. EWING. And I don't think that they are doing the spirit in the letter of the law that you said, that Congress intended for them to treat us civilly, and they are not.

Senator PRYOR. Thank you.

This gentleman right here, and I hate this, but I'm afraid this will be our last witness, our last person.

Mr. PRINCE. My name is Bobbie Prince. I live in Van Buren. I was retired 18 years ago from the military for physical disabilities. They retired me at 30 percent and social security rated me while I was still in the hospital. The social security rated me what I was entitled to then. And for 18 years, they've never paid me under anything. And during this 18 years, my condition went to 250 percent of VA standards. I have two 100 percent total and permanent disabilities, one 50 percent disability. I've just recently been told by my doctor I couldn't drive.

And I tried to talk to Mr. Patton, and Mr. Patton, he just wouldn't even talk to me. He wouldn't even listen to it. And they made me go to Rodgers, Ark., to a psychiatrist. I'm not saying you just can make it for a psychiatrist. I'm saying you can make it for colitis, which is 100 percent total. And diabetic neuropathy, which I'm in the hospital for right now. I got a pass from the hospital. I've been in 16 days. And I read the letter and it says, "You can do electronic work."

I've never done any electronic work in my life, never, never did anything like that. So where does Mr. Patton and his troop from Little Rock come off and say that I can do electronic work whenever my doctor—I'm going to be put in a wheelchair also—and tell me that I can do electronic work? I want to know where he gets the information to say that?

Senator PRYOR. Thank you, sir, very much; thank you.

Ladies and gentlemen, we're going to conclude now. I wish we could stay longer. I was supposed to be making a speech somewhere at 12 o'clock, and you can see I'm late. But that's all right. I don't mind because I think this issue is a very, very important matter.

First, I would like to thank all of the witnesses who came this morning. I know that there have been a lot of issues raised. I know that there has been one group that said this is one group's fault and the other has said it's the other's fault.

So let's just at this point try to go from this hearing with some constructive solutions on how we're going to solve the immediate problem. That is the purpose of this hearing.

Frankly, I think the Congress is largely at fault. I can put a lot of the blame on other areas as well. I think this is a case where most Americans think that there has to be some review process of people who are drawing Federal money. We have seen a problem with the whole social security program now and we want to make sure that there is enough money in that program for the people who are truly needy.

We have a real problem and we have a country, I think, that's big enough and mostly wise enough to look at that problem and try to come up with a solution.

We've heard today what I consider to be some real heart-rending stories. We see a system, I think, that has victimized some very innocent people. Some people perhaps, have been adversely affected by administrative rule interpretations of congressional statutes. We have got to correct that. We've got to correct that immediately. We've got to correct what I consider to be a system that has a great deal of injustice.

This has been, I think, a very constructive meeting and we have all been saddened, I think, by some of the cases that we've seen and heard. But, yet, sometimes we have to have our sensitivities shocked, I think, in public to make us really see the emergency conditions of people, and the human suffering. We have got to really wake the Congress up and really wake the system up to the realization that people are suffering, not because of any fault of their own. We've got to fix that system which has allowed this to take place.

I pledge my support in that area.

We thank our law judges, we thank our attorneys who have represented the clients, some without any fee or without any hope of ever getting any fee. We thank our doctors, we thank our representatives from Little Rock, we thank the witnesses that we brought with us this morning, who have given us those true cases of human concern and showing us once again the need for, not only efficiency within the system, but also compassion.

So with that, let me say thank you. I wish I could stay around to visit with you more, but I'm going to have to race out this door and go.

But thank you very much.

[Whereupon, at 12:30 p.m., the committee adjourned.]

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APPENDIX

MATERIAL RELATED TO HEARING

ITEM 1. STATEMENT OF PAUL B. SIMMONS, DEPUTY COMMISSIONER, SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. Chairman and members of the committees: I appreciate the opportunity to submit the following statement for the benefit of your committees in their consideration of the Social Security Administration's process for conducting periodic reviews of disability eligibility and the appeals process in these review cases. The statement details the history, impact, current status, and recent improvements in continuing disability investigations (CDI), as well as addressing the effect of CDI's on the hearings process. Also, SSA's concerns about the situation at the Fort Smith Hearing Office and its actions to address these concerns are outlined. The statement is similar to the statement and materials we have submitted at nine other hearings on the CDI program since last September that have been held in Washington, plus at field hearings on this subject around the Nation.

INTRODUCTION

From the inception of the disability benefit program in 1956, the definition of disability has always been very strict, and can only be met by the very severely disabled. Partial disability, which is recognized in many other benefit programs, is not sufficient for social security disability benefits.

The Social Security Act provides that a claimant's impairment(s) must be so severe that he is not only unable to do his previous work but cannot, taking into consideration his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy. So long as this work exists in the national economy, it does not matter whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. The disability must be expected to result in death or must have lasted, or be expected to last, for a continuous period of 12 months or more. This is the statutory language, not SSA's interpretation of the statute. The same definition of disability applies not only to those initially filing for benefits, but also in determining whether beneficiaries should remain on the rolls.

The original definition of disability for social security benefits was even more severe than the present one; it required that the impairment be expected to result in death or to be of long-continued and indefinite duration. The present definition was adopted in 1965, at which time the Congress indicated that it expected SSA to review the condition of beneficiaries periodically to assure prompt termination of benefits when a beneficiary ceased to be disabled. In addition to liberalizing the definition, Congress made other eligibility requirements for disability less restrictive; for example, the insured status requirements were liberalized twice.

However, aside from statutory changes in the definition, advances in medical science have resulted in de facto changes. Due to the availability of kidney transplants, bypass surgery, and new medications for mental illnesses, for example, certain medical conditions which were permanently disabling in the past may not be disabling today. Thus, medical advances may require changes in CDI procedures since people considered permanently disabled when they came on the rolls may no longer be disabled.

A number of occurrences in the 1970's raised concerns about the program. While the program grew relatively slowly during the 1960's, it began to grow rapidly during the early 1970's. In fiscal year 1969, SSA received 700,000 claims for disability benefits. By 1974, the number of disability claims per year had grown to 1.2 mil-

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lion. Part of this growth can be attributed to adverse economic periods because high unemployment encourages some workers with significant health problems to file for disability benefits.

In addition, over 500,000 claims under the black lung program, which started in 1970, had been filed over a relatively short period of time, and SSI disability claims added almost another million claims a year after that program's implementation in January 1974. The advent of these new programs requiring disability decisions put a strain on the disability determination process. The result was tremendous pressure to process claims quickly and reduce backlogs. At the same time, there was an effort to hold down processing costs, producing a conflict between quality and quantity.

By 1975, these factors resulted in the highest disability incidence rate in the history of the disability insurance program; there were 7.1 disabled worker beneficiaries per thousand workers. In contrast, the disability incidence rate was 3.5 in 1981. While disability incidence has fluctuated widely over the years, the rates of sickness and injury have not changed appreciably in the general economy.

Currently, the social security trust funds are running a deficit that mounts by $17,000 per minute, and 44 percent of that total can be attributed to the payment of DI benefits to people who are not disabled.

As incidence rates and costs increased, concerns began to be expressed about the quality of administration of the disability program. In 1979, both the Carter administration and the Congress made recommendations for improving the administration of the program and cutting costs, culminating in the enactment of Public Law 96-265, the "Social Security Disability Amendments of 1980." These amendments contained provisions aimed at: (1) Restraining the costs of the program (e.g., a cap on family benefits and restrictions on dropout years); (2) improving work incentives; and (3) improving program administration (e.g., closing the record after the hearing, own-motion review of ALJ decisions, and preeffectuation review of initial decisions). Among the latter was the provision for periodic review of the social security disability rolls.

History of the CDI Process

SSA has always reviewed disability cases to assure that beneficiaries' disabilities are continuing. However, before the periodic review process was enacted in 1980, only certain kinds of disability cases were reviewed: (1) Those in which the disabled beneficiary's medical condition was expected to improve, (2) those in which the beneficiary's earnings record indicated work activity; and (3) those in which a beneficiary voluntarily reported work activity or medical improvement.

In recent years, SSA began to question whether this CDI process was adequate. It was clearly not designed to identify cases in which the initial determination of disability was incorrect, or those in which, because of medical advances I mentioned earlier, the impairment might no longer be considered disabling. Also, only a small percentage of those cases in which improvement could be expected were being reviewed.

Congress was also concerned about the effectiveness of the CDI process, and, as I mentioned, in 1980 they enacted the periodic review requirements. This provision requires SSA to review all nonpermanent disabilities at least once every 3 years and permanent disabilities at such times as the Secretary considers appropriate. The legislation required that SSA begin the periodic review no later than January 1982.

As it turns out, the concerns which led to enactment of Public Law 96-265 were well founded. In fact, the situation was even worse than had been imagined.

A 1981 GAO report, entitled "More Diligent Followup Needed To Weed Out Ineligible SSA Disability Beneficiaries," indicated that as many as 584,000 beneficiaries, about 18 percent of the disability rolls, did not meet the eligibility criteria.

Newer data are even more alarming:

A special SSA review of 25,000 cases (representative of 60 percent of the disability beneficiary population) indicated that 33 percent were not disabled.

Another special SSA review of a statistically valid random sample of 2,800 cases (representative of the entire disability rolls) indicated that 30 percent were not entitled to benefits.

Based on this 2,800 case study, SSA was able to determine that as much as $4 billion is paid out annually to people who are not disabled.

Acceleration of Periodic Review

In light of findings in GAO and SSA studies that huge sums of benefits were being paid incorrectly, the Administration decided not to wait until 1982 to accelerate the periodic review process mandated by the Congress. The decision to go to ac-

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celerated review was also prudent administratively. Before we made this decision to accelerate the review, we had projected about 560,000 periodic review CDI's for the 9 months beginning January 1, 1982, in addition to regularly scheduled CDI's. Instead, by starting in March 1981, we had 18 months in which to spread the first year periodic review workload, thus minimizing its impact on the State agencies.

The Administration's decision to accelerate the review of the disability rolls was fully supported with appropriate staffing and other necessary resources. In fiscal years 1981 and 1982, we significantly increased staffing and funding for the State agencies which make disability determinations for SSA in initial and reconsideration cases, including CDI's. Total State agency staff increased 29 percent between fiscal year 1980 and fiscal year 1982, while funding increased 59 percent for the same period. Full-time permanent staff of the Office of Hearings and Appeals, which has responsibility for adjudicating hearings, also increased about 29 percent and funding levels for OHA rose 35 percent between fiscal year 1980 and fiscal year 1982.

I think it is important to note at this point that, this year, we estimate spending over one-half of our administrative budget to run the social security and SSI disability programs, which account for only 17 percent of the comparable benefit population.

Overview of the CDI Process

Before I discuss the impact of the current CDI process, I want to give you an overview of how the process works. As the first step, SSA chooses the cases for review based upon profiles, developed through special studies, of the nonmedical characteristics of cases in which beneficiaries are most likely to be ineligible. These cases are then screened to eliminate any involving permanent disabilities from the review process.

SSA then transfers the case folders to the appropriate SSA district or branch office which notifies the beneficiary of the review and asks him to contact the office to arrange for a personal interview. The SSA interviewer explains the reasons for the review, the steps in the review process, the rights of the beneficiary and the beneficiary's responsibilities. The interviewer obtains information about the beneficiary's current medical condition and sources of medical care and records observations about the obvious effects of the beneficiary's impairment. In certain cases in which the beneficiary is clearly still disabled, the interviewer is able to end the CDI process at that point.

For all cases in which the CDI will continue, the folders are then sent to the State agencies. The State agencies obtain any other information they need about the beneficiary's condition and medical treatment from the beneficiary and also obtain all the current medical evidence that is available.

If the current medical evidence is not detailed enough, or if the beneficiary has had no recent medical treatment, the State agency arranges a special examination of the person's present condition, called a consultative examination, at Government expense.

Through the first 13 months of the accelerated review process, about 54 percent of all continuing disability cases reviewed by the State agencies had consultative examinations performed. This is almost 15 percent higher than the percentage of initial and CDI cases in which consultative examinations were performed in the past. In fiscal years 1983 and 1984, we are budgeting for a 58-percent consultative examination rate in continuing disability cases. I might mention that we have taken several significant steps to improve our monitoring of State agency purchases of medical evidence. I am submitting the attached description of those steps for the record.

I want to emphasize that in every CDI case we obtain evidence of the beneficiary's current medical condition—either from his physician or through a consultative medical examination—before making a decision.

The State agency then evaluates the medical evidence and determines whether the beneficiary continues to be disabled within the meaning of the law. I want to stress that no "termination quota" has been imposed for the CDI's. The States must follow the same policies and procedures for periodic review that they followed for CDI's before periodic review. States are instructed to develop and adjudicate each case on its own merit, according to the policies and procedures in the Federal regulations and SSA's operating policies and procedures.

Those individuals who are found to be still disabled are informed by letter that their eligibility has been reviewed and their benefits will continue. Those who are found to be no longer disabled are given advance notice of this finding and are given 10 days in which to advise the State agency that they disagree with it and plan to

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submit additional evidence. The beneficiary has a reasonable amount of time after that to present the additional evidence.

If, after evaluating the additional evidence, the State agency still finds that the beneficiary does not meet the definition of disability in the law, the beneficiary is notified of this finding and is informed that he may appeal the decision by requesting a reconsideration within 60 days of the notice of termination. I might note that under the law the beneficiary is paid benefits for the month that the period of disability is terminated and for 2 additional months.

When a reconsideration is requested, the State agency secures updated medical evidence from the beneficiary's treating sources and requests a consultative examination if one is needed. The reconsideration determination is made by different State agency personnel from those who made the initial decision. The beneficiary is then notified of the reconsideration decision and his appeal rights. The beneficiary has 60 days after notification of the reconsideration determination to request a hearing before an administrative law judge, at which point he may appear in person to present evidence and give testimony. If dissatisfied with the ALJ's decision, the beneficiary may appeal the ALJ's decision to SSA's Appeals Council, and ultimately to a Federal court.

I might mention that in some respects the SSI appeals process for CDI cases is different from the social security process. For example, there is no reconsideration step in the SSI appeals process.

Impact of Continuing Disability Reviews

Next I want to discuss the CDI process in terms of: (1) The impact on claimants and beneficiaries, (2) the quality of the review process; and (3) the impact on hearings.

IMPACT ON CLAIMANTS AND BENEFICIARIES

Since March 1981, when we began the accelerated review through September 1982, over 676,000 disability beneficiaries have had their eligibility reviewed (either because of periodic review or because their cases were scheduled for review because their medical conditions were expected to improve), and more than 265,000 have had their benefits terminated at the initial decisionmaking level. There have been periods when the process has affected new claimants for social security disability benefits too; State agency processing times rose from 44.6 days in the first quarter of 1981 to a high of 50.3 days in the first quarter of 1982. Processing times were 45.6 days for the June 1982 quarter and 47.3 days for the September 1982 quarter. I must emphasize though that while processing times have increased at times, the accuracy rate for initial State agency decisions has undergone little change. Also, some of the increase in processing times is due to factors, such as the preparation of personalized denial notices as required under the 1980 amendments, and the requirement for a physician's signature on medical evidence.

We believe that some of the adverse reaction to the CDI process stems from misunderstanding among the general public of the fact that the periodic review process is mandated by law, and that the definition of disability for social security benefits is very strict. The adverse reaction of some disability beneficiaries to periodic review is also based on misunderstanding. Most beneficiaries never expected to have their cases reviewed again; in their own minds they have "retired" on disability. As a result, terminated beneficiaries have to make tremendous psychological adjustments. And of course current economic conditions—unemployment is high and jobs are scarce—add to their anxieties.

It has been suggested that the CDI process has been unfairly focused on beneficiaries with mental impairments. Let me assure you that this is not the case. Two factors may account for what seems to be a large number of mental impairment cases that are coming up for periodic review at this time.

First, we estimate that there is a greater percentage of mental impairments among beneficiaries who have been on the rolls for some time than among those newly allowed. This is primarily due to the fact that beneficiaries with mental impairments tend to be younger than the average new disability beneficiary and stay on the rolls longer than those with other impairments. Also, because medical reexamination diaries were not generally established for beneficiaries with mental impairments, few of them have been removed from the rolls in the past as the result of a CDI review.

Second, impairments such as neuroses and psychoses cannot be presumed to be permanently disabling. Thus, few cases involving mental impairments are screened out as permanent disabilities by the selection process we use to identify nonperman-

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ent disabilities for review. This results in releasing more mental impairment cases for CDI reviews than might otherwise be expected if straight percentages were applied to each body system.

SSA for many years has had special procedures for assisting claimants who need help in developing evidence to support their claims. For example, we tell both our social security claims personnel and State DDS adjudicators that when a claimant has a mental impairment or there is other evidence indicating that he/she is unable to understand a written notice, it may be necessary to work with close relatives or other interested parties in gathering evidence to adjudicate the claim.

QUALITY OF THE REVIEW PROCESS

To monitor the performance of State agencies in making continuing disability decisions, SSA performs a quality assurance (QA) review. The review involves a random sample of recent State agency DDS decisions and is designed to determine the extent to which State agency decisions properly reflect the eligibility criteria in the law and regulations. Under this review, nearly 96 percent of continuing disability determinations in the 6-month period ending September 1982 were found to be correct. This shows that the accuracy of our CDI review is very good. Of course there is always room for improvement and, as I will discuss later, we are undertaking a number of initiatives aimed at making improvements.

IMPACT ON HEARINGS

Our hearings workload has been increasing and as a result processing times have increased. Total hearings requests have increased from almost 208,000 in the first 9 months of fiscal year 1981 to 235,000 in the same period in fiscal year 1982. In March 1982, we received 32,000 requests, which is the most we have ever received in a single month. There has also been an increase in processing time for hearings, from 164 days in fiscal year 1981 to 179 days for the quarter ending September 1982.

For budget purposes, we are projecting 357,700 requests for hearings in fiscal year 1983, an increase of 27 percent compared to fiscal year 1981. This projected increase includes expected increases due to CDI hearings requests. However, appeals are expected to level off to some extent once we have reviewed the existing disability rolls.

Lower level decisions that are appealed are now being reversed by ALJ's in approximately 50 percent of non-CDI cases and 61 percent of CDI cases. This of course raises the question, "If our quality appraisal shows a 96-percent accuracy rate for initial State agency CDI decisions, why is the allowance rate at the hearings level so high?"

There are a number of factors which can result in allowances at the hearings level, including the subjectivity of the decisionmaking process, the face-to-face contact between the beneficiary and the ALJ, the possibility of progressive worsening of the claimant's medical condition during the course of the various reviews of the claim, and the fact that additional evidence may become available at the hearing level for the first time. In other words, it is very possible that in the same case the State agency decision to deny benefits and the ALJ decision to allow benefits were both correct. Unfortunately, we have also discovered a problem of incorrect decisions by ALJ's. Under our program of own-motion review, as required by the Bellmon amendment, the Appeals Council is now reviewing 15 percent of ALJ allowance decisions. This review includes both initial claims and CDI cases. We are finding defects in 47 percent of the decisions we review. In approximately 18 percent of cases reviewed, these errors are so substantial that the Appeals Council must either reverse the ALJ's decision or remand the case to the ALJ for further action.

At this point, let me digress for a moment to discuss the special review of decisions from the Fort Smith hearing office which we began in August 1981. This review, which was conducted by the Appeals Council using its own-motion authority, was initiated because of serious problems with the quality of decisions by the three ALJ's assigned to Fort Smith.

At the start of the Fort Smith review, the Appeals Council found errors serious enough to warrant exercise of its own-motion review authority in 31 percent of the cases. In these cases, to correct decisional errors, the Appeals Council either reversed the ALJ's decision based on the evidence of record or remanded the case to the ALJ for further proceedings.

The Appeals Council's reversal decisions and remand orders provide feedback concerning decisional deficiencies. In addition, two of the ALJ's received supplemental training in Arlington, Va., to address specific problems identified as a result of the review.

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In July 1982, the Fort Smith office was taken off the special review and the three ALJ's were included in our ongoing program of own-motion review pursuant to the Bellmon amendment. By that time, the Appeals Council had examined 1,037 Fort Smith decisions and reversed or remanded 233 of them or 22 percent.

SSA's Initiatives To Improve the CDI Process

Now I would like to tell you about some of the actions we are taking to improve the CDI process. These improvements fall in four general categories: (1) Those intended to improve the overall CDI process; (2) those affecting quality control; (3) those which will improve the appellate process; and (4) managing caseloads.

First, we are trying to upgrade the overall CDI process as follows:

We are refining our selection criteria so that more beneficiaries who are permanently disabled are identified and exempted from the 3-year periodic review process. In March, we identified several new categories of impairments—such as arthritis of a major weight-bearing joint in a person age 59 or over—which should be considered permanent and, as additional experience is gained, we expect to add additional impairments to the list. This has cut down on the number of reviews and allowed more time to be spent on each case.

As I mentioned earlier, beginning October 1, at the start of each CDI, we interview the disability beneficiary. This corrects an anomaly which had existed in the CDI process in which face-to-face contact with the beneficiary had frequently occurred only at the ALJ level of appeal. This one flaw had been perhaps more to blame than any other factor for the "horror stories" of people who have been dropped from the rolls despite glaringly obvious disabilities. Also, since field personnel conducting these face-to-face interviews can terminate the CDI process when it is obvious that the beneficiary is still disabled, both strain and anxiety for beneficiaries and State agency workloads are reduced.

Since May 1982, we now require State agencies to develop all medical evidence of record listed by the beneficiary for the past 12 months, rather than restricting development to evidence which appears pertinent to the CDI decision, or to provide documentation as to why all evidence listed could not be obtained.

Our regional offices are working with the State agencies to set up more effective internal reviews of error-prone cases.

We are testing the use of multiple consultative medical examinations in certain cases, particularly those involving psychiatric impairments.

We are encouraging the States to increase the number of psychiatrists on their staffs in order to enhance their ability to review cases involving mental impairments.

Since March, we have required the States to furnish more detailed explanations of termination decisions.

We are attempting to improve decisionmaking by physicians employed by SSA and State agencies through training, particularly training regarding the evaluation of psychiatric impairments and an individual's remaining capacity to work.

Second, we are trying to improve quality control through the following efforts:

As part of our quality review process we examine a sample of CDI cases after a decision has been reached to see whether the disability is continuing or has ceased. To improve this procedure we are taking two steps: (1) In termination cases, we are conducting the quality review before benefits are stopped, and (2) we have doubled the number of quality reviews of termination cases—from 13,500 cases annually to 27,000.

In our quality review process, we are studying terminations to ascertain what kinds are especially error-prone, and are subjecting these kinds of cases to a more intensive review before a final decision is made. In the July to September 1982 quarter approximately 550 erroneous cessations were prevented as a result of this review.

The third area where we are making improvements is in the CDI appellate process:

In general, we are determining that a disability has terminated as of the date the beneficiary is notified of the termination.

We are giving priority to appeal requests in termination cases.

We have hired more than 100 additional ALJ's in fiscal year 1982, increasing the size of the corps to 800. We are also increasing the ratio of support staff to the ALJ's from the past level of approximately 4 to 1 to a ratio of 5 to 1.

Through improved training, upgraded equipment, and new workflow and organizational arrangements, we are increasing the productivity of hearing offices.

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Finally, we have continuously monitored State agency resources and workloads to adjust the flow of cases as necessary.

Some State agencies have had problems acquiring adequate resources in a timely fashion. Where backlogs have risen because of circumstances beyond the agency's control, we have reduced or stopped the flow of cases. These State agencies include Colorado, Delaware, District of Columbia, Florida, Hawaii, Indiana, Kentucky, Maryland, Massachusetts, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, Texas, West Virginia, and Wisconsin.

August is traditionally a month with high vacation rates. So that all States would have an opportunity to get caseloads under control while so many personnel are on vacation, SSA released only one-third of the normal volume of cases for review in August.

In September, no new cases were identified and sent to State agencies by SSA for periodic review so that States could reduce their workloads.

In preparation for the implementation of the face-to-face interview in October 1982, several State agencies forwarded their backlogs to the local SSA offices. These States included: California, Colorado, Florida, Hawaii, Indiana, Kentucky, Maryland, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, Texas, West Virginia, and Wisconsin.

As a result of these adjustments, we estimate that we processed 497,000 continuing disability cases in fiscal year 1982 rather then the 567,000 previously planned.

SSA expects to be able to reduce the numbers of cases that have to be reviewed in fiscal year 1983 to meet the mandate of the law from the 800,000 figure in our fiscal year 1983 budget to about 640,000, a major reduction in workloads for State agencies.

Pending Legislation

Next, I would like to talk about legislation pending in the Congress that addresses the CDI process. As you know, H.R. 6181 was approved by the House Ways and Means Committee on May 19. The Administration supports H.R. 6181 with the exception of three provisions—sections 3, 9, and 12. These sections would: (1) Increase the costs of the social security system by extending disability benefits for an additional 4 months for those people who have collected benefits for 3 or more years and were terminated because of medical recovery; (2) restrict program discretion by automatically indexing the substantial gainful activity level used in determining eligibility for DI and SSI benefits; and (3) unnecessarily expand vocational rehabilitation services for which Federal funds can be used.

In addition to H.R. 6181, bills addressing the CDI process have also been introduced in the Senate. Some of those bills contain provisions similar to the provisions of H.R. 6181 which we support, and we consider these provisions to be reasonable and constructive. We believe that SSA's administrative initiatives together with legislative improvements, such as those I have just mentioned, represent a strong two-pronged attack on the serious disability problems that I have been discussing today. I look forward to working with the Congress on constructing an effective legislative package to improve the disability program.

Conclusion

In conclusion, I would like to reiterate the fact that the periodic review process is part and parcel of our ongoing mission to insure that disability benefits are paid only to those individuals who meet the criteria established in the law. The periodic review process has emerged from concern, on the parts of the Congress, GAO, and administrations of both parties, that huge sums are being incorrectly paid to the individuals who are not eligible for such payment.

In the vast majority of cases, the reason people are being taken off the rolls is not because of deficiencies in the process, but because they are not disabled under the terms of the law—many of them were on the rolls erroneously to begin with and many of them recovered after they came on the rolls. We are now paying the price because the necessary emphasis was not put on quality in original decisions and there was not a strong ongoing program for reviewing the existing disability rolls. Once we complete our review of the existing disability rolls and we maintain high quality in the initial determination and appeal process, the proportion of terminated beneficiaries should decline.

There is no question that some mistakes have been made and, unfortunately, even if our accuracy rate improves, it is unreasonable to expect that we will reach perfection. In a program as large as the disability program even a small percentage of

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error translates into a substantial number of cases. We will continue to do our best to improve our accuracy rate.

Attachment.

SSA Actions Taken To Improve Management of Consultative Examinations

Listed below are brief summaries of a wide range of actions taken to improve consultative examinations (CE's). These actions have been directed toward providing clear program direction on CE report requirements and maintenance of a quality process as well as establishing a more formal program of monitoring State agencies in this area.

Basic SSA policy was issued in Social Security Ruling 82-14, which covered CE physician qualifications, independence of CE physicians from other program or claimant relationships, content of CE reports, and physician signatures on CE reports.

Detailed instructions have been issued to State agencies in the SSA Program Operations Manual in order to achieve improved CE reports nationally. These instructions cover a broad range of aspects of the CE process including:

—Selection of CE sources.

—Arrangements for a CE, including provision of pertinent materials in file.

—Report content and signature requirements.

—Guidelines for review of CE reports.

—Specific medical specialty report requirements.

In the initial monitoring by SSA of State agency CE management processes, all States provided general descriptions of their practices for oversight of CE's as well as specified data on the "top 10" providers. These responses were analyzed and weaknesses in handling complaints, keeping records, maintaining ongoing oversight and other areas were identified. Regional Commissioners (RC's) then worked with each State to improve oversight. Status reports have been submitted from all regions.

In the second stage of SSA monitoring efforts, an in-depth protocol was developed for reviewing all aspects of a CE provider's operation and the State agency's oversight of it. Joint SSA-State onsite reviews of 30 CE providers were completed by the end of April. A summary analysis is being prepared for each region of what was learned on the onsite reviews.

Administrative guidelines were issued to State agencies in a fiscal and administrative letter. These specify what States must do in their oversight of CE providers. In addition, specific instructions were issued to RC's regarding the need to monitor State agency compliance with the administrative guidelines.

State agency administrators and staff from 45 disability determination services attended the first disability programs management forum in March. The forum included a series of workshops designed to allow administrators to share problems and solutions for managing the CE process.

Additional technical policy guidelines will be issued in the near future. Such issues as whether CE providers are bound by the Privacy Act and how CE providers should respond to requests for interrogatories by claimant's attorneys have been raised as we have explored the complaints of the legal community concerning CE providers.

We are developing a methodology for quality review of CE providers through the case review process. At present, review procedures do not provide for the sampling of cases by CE provider.

We are providing the regional offices on an ongoing basis with reports of providers suspended or terminated by the Health Care Financing Administration for fraud or abuse of Federal funds.

The States were surveyed to determine whether it would be advantageous to negotiate fee schedules with large CE providers. Because of poor public perception it was deemed not desirable/advantageous.

A central reference file is being developed to coordinate claimant/physician/attorney complaints and to coordinate responses and information with the regions.

ITEM 2. LETTER FROM LOUIS B. HAYS, ASSOCIATE COMMISSIONER, OFFICE OF HEARINGS AND APPEALS, SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES, WASHINGTON, D.C., TO SENATOR DALE BUMPERS, DATED JUNE 18, 1982

Dear Senator Bumpers: This is in response to your letter of April 5 to Commissioner Svahn regarding the social security disability hearings and appeals process. Please accept my apology for the delay in responding.

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In response to your concerns about delays in case processing at the Appeals Council level, I can assure you that there is no significant backlog. Most cases at the Appeals Council level involve requests for review made by claimants. Others are reviewed by the Council in its own motion. In cases where the claimant requests Appeals Council review of an unfavorable decision by an administrative law judge (ALJ), our statistics show a consistently high rate of compliance with the voluntary 120-day time limit promulgated in 1979. For example, in April, the compliance rate was nearly 92 percent. In cases where the Appeals Council reviews an ALJ decision on its own motion, it must do so within 60 days of the ALJ decision. On the average, this review is taken within 30 to 45 days. Those cases which are sent to the Appeals Council for possible own motion review, are forwarded to the appropriate Social Security Administration (SSA) component to initiate payment within 10 to 15 days of receipt, on the average.

Not all decisions of the ALJ's in Arkansas are being reviewed by the Appeals Council. At the present time, only the three ALJ's in the Fort Smith hearings office are required to forward their decisions to the Appeals Council for review. None of the 11 ALJ's in the Little Rock hearing office is under review. "As I have explained in earlier correspondence, the review of the decisions of the Fort Smith ALJ's was prompted by the extremely high rate at which these ALJ's were reversing the determinations of the lower level decisionmakers. This review is necessary to protect the integrity of the disability programs by insuring that the decisions of the ALJ's conform to the applicable law and regulations."

Finally, you raise the question of whether decisions of the U.S. Circuit Courts of Appeals are binding on the ALJ's. SSA, of course, is bound by every court's decision as it applies to the plaintiff bringing the action unless and until it is reversed on appeal. SSA does not, however, consider that ALJ's are bound, with respect to nonlitigants, by each decision of the various district and circuit courts, but only by the law, regulations, Social Security rulings and the decisions of the U.S. Supreme Court. Indeed, the executive branch could be considered to be abdicating its responsibility if it turned over the determination of agency policy to each of the 94 district or 12 circuit courts that opined on an issue. In addition, often within the same district, courts reach different decisions on the same issue. In a program of national scope, it would not be equitable to claimants and beneficiaries, and could raise "equal protection" issues, to subject their claims to differing standards, depending on individual decisions of the various judges (currently nearly 500) presiding in the judicial districts in which claimants reside.

I hope this information is helpful in addressing your concerns.

ITEM 3. ADDITIONAL STATEMENT OF HON. JERRY THOMASSON,[1] ADMINISTRATIVE LAW JUDGE, OFFICE OF HEARINGS AND APPEALS, SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES, FORT SMITH, ARK.

Thank you for the opportunity to expand on my testimony given on November 19, 1982, in an on the site field hearing on the social security disability insurance program before the Special Committee on Aging of the U.S. Senate and the Subcommittee on Civil Service, Post Office, and General Services of the Governmental Affairs Committee of the U.S. Senate.

Arkansas State Agency

Since appeals from adverse decisions concerning disability by the Arkansas State agency come to us for hearing, their activities have a significant impact on our work.

For the last 5 years, the Arkansas State "agency" has denied a higher percentage of applicants for disability benefits than any other State in the United States. This, notwithstanding a comparatively low educational attainment level.

In addition, I have personally observed the following "problems" created by the Arkansas State agency:

(a) Failing to obtain existing medical evidence, of which they are aware, prior to making a decision.

(b) Requiring claimants to go hundreds of miles for consultative examinations when a physician is available in their hometown. For instance, the State agency will send someone 90 miles from Russellville, Ark., to Fort Smith, Ark., to see an ortho-

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[1] See statement, page 44.

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pod, and on the other hand, require someone to go from Fort Smith, Ark., to see an orthopod. The same situation exists between Fort Smith, Ark., and Fayetteville, Ark., approximately 70 miles. The same situation exists between Harrison, Ark., and Fayetteville, Ark., a distance of over 100 miles. Also, if a claimant is going to see two physicians, the appointments will often be scheduled on separate days and the claimant has to make two trips to a distant town. There is no effective public transportation in our area and family members often have to take off work to take the claimants to see these physicians. I have seen so many instances of claimants having to travel long distances to see physicians that I question the ethics involved.

(c) On cessation cases, the Arkansas State agency does not appear to consider the medical evidence on which the original decision of disability was based in determining someone is no longer disabled. For instance, a neurosurgeon may have determined someone is disabled in the past because of brain damage, the State agency, on cessation, will send the individual to a general practitioner and may well determine the claimant is no longer disabled.

(d) On cessation cases, the Arkansas State agency appears to not consider the impairment involved and how age affects that impairment. For instance, if a person has been put on disability because of emphysema or degenerative arthritis or other matters for which there is no medical improvement of a significant degree, the Arkansas State agency finds said impairment improved and that the individual is no longer disabled.

(e) On cessation cases, the Arkansas State agency sends the claimant for examination by a different type of physician than the impairment calls for. For instance, on many occasions I have seen cases involving only a back injury and nothing else, but the claimant was referred for examination by a psychiatrist for cessation purposes. I have also seen cases where an individual was drawing disability for schizophrenia and the Arkansas State agency would send the claimant for examination by a general practioner or a orthopedic surgeon for evaluation for cessation purposes. I have heard no reasonable explanation for this type of action.

(f) I have seen many cases where the Arkansas State agency will send the claimant 70 miles to see a specialist, that specialist will say the claimant is totally and permanently disabled and the State agency will deny that claimant benefits.

(g) I have seen cases where the only evidence showed the claimant was dying and the Arkansas State agency denied benefits.

Quality of Decisions by the Three ALJ's Assigned to Fort Smith

In the statement for the record introduced at the Fort Smith, Ark., hearing on November 19, 1982, Deputy Commissioner Simmons stated that the special review of decisions from the Fort Smith, Ark., hearing office beginning in August 1981, was initiated "because of serious problems with the quality of decisions by the three administrative law judges assigned to Fort Smith, Ark."

I have already alluded to the fact that on June 18, 1982, Associate Commissioner Louis B. Hays wrote Senator Dale Bumpers a letter in which he stated: "As I have explained in earlier correspondence, the review of the decisions of the Fort Smith, Ark., ALJ's was prompted by the extremely high rate at which these ALJ's were reversing the determinations of the lower level decisionmakers."

In any event, concerning "quality," I am attaching hereto an undated internal memorandum addressed to Barry W. Haley. Said memorandum refers to the year 1979 and stated therein is this: "Fort Smith maintained the highest combined performance index at 147—Fort Smith also led in the lowest average processing time." This refers to region VI.

Further, on the question of quality, Chief Administrative Law Judge Philip T. Brown, approximately 1 year prior to the times referred to by Deputy Commissioner Simmons, wrote Judge Mayhue and I a letter thanking us for our work and stating he was satisfied we had not sacrificed quality. A copy of that letter addressed to Judge Mayhue is attached as an exhibit to Judge Mayhue's testimony at the hearing on November 19, 1982 [see page 51].

In addition, in 1980, the undersigned was invited to sit as a visiting judge on the Appeals Council in Washington, D.C.

I suggest to you that this Administration is using the Bellmon amendment and the work "quality" therein as a tool to harass administrative law judges who pay a higher percentage of cases than this Administration feels should be paid.

Effect of Review

Initially, the review of the cases of the administrative law judges at Fort Smith, Ark., was not conducted under the Bellmon amendment. This was a special review

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and it was changed over to the Bellmon review at approximately the day after Burt Schorr, reporter with the Wall Street Journal, questioned individuals at OHA headquarters in Arlington, Va., about the situation at Fort Smith, Ark. The 100-percent review resulted in remands of cases in larger numbers than had existed previously. Some of these remands were, in the opinion of the undersigned, spurious in nature and signed by Burton Berkley, codeputy chairperson of the Appeals Council. The result was a backlog of cases, increased pressure on the undersigned and my staff, who had to answer correspondence and the telephones concerning the delay of processing claims. It put pressure on my family and it hurt the people whose cases I heard because it delayed their receiving decisions. This delay averaged a substantially longer period of time than what has been stated by members of this Administration. The net effect of it has been that social security law has meant something else to the people in our service area than what it has meant in other sections of the country and other sections of the State of Arkansas. I would like to pose as a question. "Why should the people of Arkansas have to suffer because of my poor quality of decisions." If I am unable to perform this job, the Administration has remedies available to it.

Harassment

I have previously testified as to how, in 1981, I was ordered back to Detroit, Mich., to rehear one case by Associate Commissioner Hays and that this was explained to me as being "punishment" by a regional official at that time. I was subsequently called to Washington, D.C., in January 1982, for consultation with Chief Judge Philip Brown, Burton Berkley, codeputy chairperson, and Bill Levere, Office of Appeals Operation. What I got out of this visit was that I should not follow the Eighth Circuit Court of Appeals and that if I paid 45 to 55 percent of the cases before me, everything would be all right. In May 1982, I was called back to Washington, D.C., on a 1-day notice and required to sit in with a class of new administrative law judges for 3 days. Much has been made about paying a certain percentage of people but no one has ever suggested whose mother I should deny because a quota had already been met. I have discussed this matter with OPM and no remedy was suggested.

Over $3,600 has been spent by Commissioner Hays "punishing" administrative law judges in this office for doing what they took an oath to do.

The Appeals Council has authority to reverse an administrative law judge on any case they so choose. Instead, some of them concern themselves with percentages of "pays."

Medical Criteria

House doctors at Social Security draw up medical criteria for disability purposes. Treating physicians do not understand how to respond to said criteria and the result is that many people who are disabled are not being paid benefits. The medical criteria, in many instances, has become so detailed and restrictive that it fails to meet the purpose for which it was set out.

An example of the criteria problem is one where a treating cardiologist and two consultative internal specialists state that an individual is totally and permanently disabled from heart disease then after multiple stress tests, the individual was found not disabled by the State agency because her angina was "not typical."

Regional Commissioner's Review

Martha McSteen, Regional Commissioner of Social Security, has encouraged district office managers to write her if they disagree with our decisions. They do this without sending us, the claimant, or the claimant's counsel a copy of the letter. Ms. McSteen, in many instances, writes Washington, D.C., suggesting review, and copies are not furnished to us, the claimant, or claimant's counsel. As a result of this secret review, the claimant's benefits may be ceased or the case remanded to us for additional hearing. This has occurred in cases where the administrative law judge's decision has already been effectuated. Interestingly enough, we have seen no instance where a district office manager complained about our denying benefits. All the instances of this we have seen have been unhappiness because we have found someone disabled. There does not appear to be any legal basis for this review.

I previously stated, being told in December 1981, by a Special Assistant to Commissioner Hays, that my trouble here would not cease until we satisfied Ms. McSteen on our reversal rate.

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SUGGESTIONS

I suggest Congress should decide the definition of disability and not let Social Security house doctors subvert it. The present statutory definition appears good and has been tried out in the courts.

I suggest the reconsideration level of decisionmaking is a useless, time-consuming process and should be done away with.

I suggest the Appeals Council, presently politicized, should be done away and appeals from our decisions should go directly to Federal court.

I suggest administrative law judges should be removed administratively from the Social Security Administration.

Finally, I believe the people are losing confidence in something they need to have confidence in.

Thank you for your inquiry.

Attachment.

MEMORANDUM FROM JUNE S. JENKINS, SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, TO BARRY W. HALEY, SUBJECT: PERFORMANCE AND PRODUCTIVITY REPORT, REGION VI

As you requested, I have attached a report on performance and productivity in region VI for the period December 1978 to May 1979. A condensation of the report follows:

The combined performance index of region VI was 116, as compared with 104 for the national level. ALJ performance index regionally averaged 146, while the national average was 148.

Support staff performance index was higher in region VI (104) than the national index (92).

With respect to production, the ALJ's average in region VI was the same as the national average (27). Average processing time was less in the Dallas region (137) than the national average (151).

The support staff ratio in region VI was below the national level, i.e., 3.5 versus 4.1. The average age of pending cases (93) was below the national level (104).

HEARING OFFICES

Fort Smith maintained the highest combined performance index at 147, with Alexandria in second place at 142. San Antonio was the third highest in the region. Fort Smith also led in the lowest average processing time, with McAlester and Oklahoma City vying for second place, and Tulsa running third.

The lowest combined performance index in region VI was Oklahoma City. Dallas (DT) was the second lowest, and McAlester third lowest.

Although Oklahoma City showed a poor combined performance index, production was highest in this hearing office. A support staff ration 5.2 exceeded the national average of 4.1. Fort Smith hearing office was the second highest producer, 35 per ALJ, with Tulsa producing at the rate of 30 cases per ALJ.

The highest average age of pending cases existed in Albuquerque (113), second highest in New Orleans (107), and Houston ranked third (105). The national average was 104.

In summary, for the period December 1978 to May 1979, region VI performance was better than the national level, and the average ALJ production was the same as the national level. Average processing time was also at the national level and the average age of pending cases was below the national level.

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